112-854

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~347.~~ ~~27~~ 16

LOUIS H. MAHN, APPELLANT,

vs.

HARRISON HARWOOD, HENRY G. HARWOOD, AND HARRISON HARWOOD, JUNIOR, TRADING AS H. HARWOOD & SONS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 15, 1881.

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No. 347.

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1 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States begun and holden at Boston, within and for the district of Massachusetts, on Wednesday the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Before the honorable Nathan Clifford, associate justice.

LOUIS H. MAHN, COMPLAINANT,
v.
HARRISON HARWOOD ET AL., DEFENDANTS. } In equity.

2 The bill of complaint in this cause was filed in the clerk's office on the fifth day of March, A. D. 1878, and was duly entered at the October term of this court, A. D. 1877, and is in the words and figures following:

3 *Bill of complaint.—Filed March 5, 1878.*

Louis H. Mahn, of Jamaica Plain, Boston, in the State of Massachusetts, and a citizen of said State, brings this his bill of complaint against Harrison Harwood, Henry Harwood, and Harry Harwood, trading as H. Harwood & Sons, all of Natick, in said district.

And thereupon your orator complains and says:

I. That one James H. Osgood, of Boston, Massachusetts, invented certain new and useful improvements in covering base-balls and other similar articles, not known or used by others in this country, and not patented, or described in any printed publication in this or any foreign country before his invention thereof, and not in public use or on sale for more than two years prior to his application for letters patent therefor; and being so as aforesaid entitled, the said James H. Osgood did, upon payment of the duty required by law, and other due proceedings had, obtain a patent therefor, to wit, letters patent of the United States numbered 127098, and bearing date the 21st day of May, 1872, duly granted, issued, and delivered to the said James H. Osgood.

II. That afterwards, the said James H. Osgood, by good and lawful deed of assignment, duly recorded as required by law, assigned the said letters patent and invention unto your orator.

4 III. That said letters patent were afterwards duly surrendered for good and lawful cause, and thereupon and on the payment of the duty required by law, a new patent for the same invention, and in accordance with corrected specifications was duly granted, issued, and delivered to your orator, as assignee of the said James H. Osgood, which letters patent were numbered reisssue 7046, and dated the 11th day of April, 1876, whereby your orator became, and still is, the sole owner of said reissued letters patent and of the exclusive right to make, use, and vend the said invention within and throughout the United States and Territories.

IV. That your orator has invested large sums of money and expended much time and labor in making said invention profitable and valuable, both to himself and the public, and is now extensively engaged at Jamaica Plain aforesaid in the manufacture, and both there and elsewhere in the sale, of balls containing and embodying the said invention, whereby your orator's exclusive rights under said reissued letters patent are of great value to him.

V. That your orator's exclusive rights as aforesaid have been and are generally respected by the public, and that he has never acquiesced in, or permitted any infringement of the same, but on the contrary has by advertisements and notices spread throughout the United States warned the public against such infringement.

VI. That your orator brought suit, in the circuit court of the United States in and for the eastern district of Pennsylvania, against Alfred J. Reach and Albert C. Johnston, trading as Reach & Johnston, for infringement of said reissued letters patent, which suit was ably and strongly contested by the defendants therein, and was brought to a final hearing upon pleadings and proofs before the Hon. William McKennan, circuit judge of said court, and was fully argued by counsel for both parties, and the said court did order, adjudge, and decree that the said reissued letters patent were good and valid, and that the title to the same was duly vested in your orator, and that the said defendants had infringed the same, and did further order, adjudge, and decree that the said defendants therein be restrained by a perpetual injunction from further infringement, and that your
5 orator should recover the gains and profits made by said defendants therein, and damages sustained by your orator in consequence of said infringement.

VII. That afterwards your orator brought suit in the said last-mentioned court against John D. Shibe and Benjamin F. Shibe, trading as J. D. Shibe & Co., for infringement of said reissued letters patent, which suit is still pending, but on motion of counsel and affidavits filed, the said court did order that a preliminary or provisional injunction issue to restrain the defendants therein from infringement of said reissued letters patent, pending the trial of said cause, which said injunction was duly issued and is still in force.

VIII. That in said first-mentioned suit against Reach & Johnston this defendant, Harrison Harwood, was called and examined as a witness on behalf of the defendants therein, and was their principal witness both as to facts and as an expert, and your orator is informed and believes that the said Harrison Harwood took part in the defence of said suit, and aided the defendants therein by advice, information and otherwise.

IX. And your orator is informed and believes, and thereupon avers that the defendants herein, with full knowledge of your orator's exclusive rights in the premises, have, since the said eleventh day of April, 1876, at Natick aforesaid and elsewhere in the United States, unlawfully made, used, and sold balls containing and embodying the improvements so as aforesaid patented unto your orator in said reissued letters patent, in violation and infringement of your orator's exclusive rights thereunder, and to his great damage and injury, and your orator upon information and belief avers that the said defendants herein intend to and will continue their unlawful acts and violation of your orator's exclusive rights as aforesaid, to his great and irreparable injury, unless prevented by this honorable court.

X. To the end therefore that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporeal oaths, and according to the best and utmost of their several and respective
6 knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as, by the note hereinunder written, they are respectively required to answer: that is to say,

1. Whether letters patent were not issued to James H. Osgood and reissued to the complainant as hereinbefore set forth.

2. Whether the said defendant Harrison Harwood was not a witness in the case of Mahn vs. Reach & Johnston, hereinbefore mentioned, on behalf of the defendants therein.

3. Whether the said defendant Harrison Harwood did not carefully examine, and testify respecting the balls put in evidence in said suit of Mahn vs. Reach & Johnston, marked "Exhibit Bryans" and "Exhibit B."

4. Whether the said Harrison Harwood has not within the United States, either by himself or in connection with his co-defendants herein, since the 11th day of April, 1876, made, used, or sold balls substantially identical in construction with the aforesaid balls referred to as "Exhibit Bryans," and "Exhibit B."

5. Whether the said defendants herein, or any or either thereof, have not, within the United States, since the 11th day of April, 1876, made, used, or sold base balls of yarn, or yarn with a rubber centre, containing and embodying an outer and inner covering, each of which is composed of two pieces of leather, and applied to the ball independently of each other, substantially as and for the purpose specified in said reissued letters patent No. 7046, dated April 11th, 1876.

6. Whether the said defendants herein, or any or either thereof, have not, within the United States, since the 11th day of April, 1876, made, used, or sold base-balls containing and embodying the improvements, or any thereof, patented in said reissued letters patent No. 7046, dated April 11th, 1876.

XI. And that the said defendants may answer the premises and may be decreed to account for and pay over to your orator all the gains and profits which have accrued to them or either of them from their infringement aforesaid, and also to pay to your orator all the damages which your orator has sustained by reason of said infringement, and
7 that the said Harrison Harwood, Henry Harwood, and Harry Harwood, trading as H. Harwood & Sons, and each of them, their, and each of their, servants, attorneys, agents, and workmen may be perpetually restrained by the writ of injunction issuing out of this honorable court from directly or indirectly making, using, or vending the improvements, or any thereof, patented in the said reissued letters patent No. 7046, dated April 11th, 1876, or anything substantially the same in construction or operation; and that pending the trial of this cause a similar writ do issue for that purpose; and may it please your honors to grant unto your orator, not only the several writs of injunction as aforesaid, but also the writ of subpœna, issuing out of this honorable court directed to the said Harrison Harwood, Henry Harwood and Harry Harwood, trading as H. Harwood & Sons, and commanding them to appear and answer this bill of complaint, and to do and receive what to your honors may seem meet.

And your orator will ever pray.

LOUIS H. MAHN.

P. J. FLATLEY,
Solicitor for Complainant.
JOS. C. FRALEY,
Of Counsel for Complainant.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Louis H. Mahn, the above-named complainant, having been duly sworn, deposes and says that he has read the foregoing bill of com-

plaint, by him subscribed, and knows the contents thereof, and that the facts therein set forth are true to his own knowledge, except such as are stated upon information and belief, and these he verily believes to be true, and he verily believes James H. Osgood, in said bill mentioned, to be the true, original, and first inventor of the improvements patented in the said reissued letters patent No. 7046, dated April 11th, 1876.

LOUIS H. MAHN.

Sworn and subscribed before me this 5th day of March, 1878.

ALEX. H. TROWBRIDGE,
Deputy Clerk.

8 NOTE.—All the defendants are required to answer under oath the special interrogatories marked 1, 5, and 6. The defendant, Harrison Harwood is required to answer under oath the special interrogatories marked 2, 3, and 4.

P. J. FLATLEY,
Solicitor for Complainant.

At the same term the following answer was filed, namely:

Answer.—Filed April 23, 1878.

United States circuit court, district of Massachusetts. In equity.

LOUIS H. MAHN
vs.
HARRISON HARWOOD ET AL.

The joint and several answer of Harrison Harwood, Henry G. Harwood, and Harrison Harwood, jr., to the bill of complaint of Louis H. Mahn.

These defendants, saving and reserving to themselves, now and hereafter, all and all manner of benefit of exceptions to the manifold errors and insufficiencies in said bill contained, for answer to so much thereof as they are advised is material to be answered unto, answering say:

They do not know Henry Harwood nor Harry Harwood named as defendants in said bill of complaint, and deny that either is a member of the firm of H. Harwood & Sons, although they admit that Henry G. Harwood and Harrison Harwood, junior, are members of said firm.

They know nothing at all of the assignment mentioned in said bill of complaint.

They deny that said Osgood was the original and first inventor or discoverer of any material and substantial part of the thing patented in letters patent, reissue No. 7046, dated April 11th, 1876, in said
9 bill mentioned, unless it be the peculiar stitch, and the cover composed of inner and outer coverings made of two hemispherical sections moulded into shape as described in said patent, and especially referred to in the second and fourth clauses of claim, which, so far as they are now informed, or have any reason to believe, were invented by him.

Farther answering, they say that the following persons, each residing at the place set first after their names, each had knowledge of the thing patented in said reissued letters patent, and especially referred to in

the first and third clauses of claims thereof, and used the same at the places set second after their names, all long before the pretended invention thereof by said Osgood.

Harrison Harwood, Harrison Harwood, junior, Henry G. Harwood, Horace Mann, William A. Cutler, William G. Clark, Margaret Byers, Ellen Whalen, Mary Marnell, Mary Dailey, Edmund R. Alexander, Albert V. Jones, William F. Felch, Fayette E. Travis, Ira H. Felch, Cyrus H. Beal, Gilbert W. Underwood, Edward F. McLain, Josiah S. Bacon, William H. Tash, A. F. Bacon, Richard Evans, and George A. Knowlton, all of Natick, in this district, and at said Natick, and Winthrop H. Ring, of Milford, in this district, at said Milford.

And they farther aver that the same was known to and used by very large numbers of other persons, whose names and residences, and the places at which they used the same, applicants pray leave to add hereto by amendment from time to time, when ascertained.

Farther answering, these defendants deny that they have ever manufactured, used, or sold any base-balls having a cover formed of two hemispherical pieces, as shown and described in said patent, and they also deny that they have ever used the stitch therein described, or any other stitch in substance the same.

Farther answering, they deny that said original letters patent No. 127098 in said bill mentioned, were duly surrendered for good and lawful cause; and aver that they were surrendered for the purpose of claiming more than was invented or described by said Osgood. They also aver that said original letters patent were good and valid as far as they now know or believe, or have any reason to believe, and that they were surrendered wholly without good or lawful cause.

10 Farther answering, they are advised and believe, and so aver, that said reissued letters patent are for other and different inventions than any described, suggested, or substantially indicated in said original letters patent, and deny that said reissued letters patent are for the same invention as was said original letters patent; and more especially they aver that the things claimed in the first and third clauses of said original letters patent are neither of them described, suggested, or substantially indicated as of the invention of said Osgood in said original letters patent.

Farther answering, they deny that the complainant has invested large sums of money and expended much time and labor in regard to said invention, as alleged in said bill, and also deny that he is now or ever has been engaged in the manufacture or sale of balls embodying the same, and they aver that the balls described in said letters patent are commercially valueless.

Farther answering, they deny that the pretended exclusive rights mentioned in said bill have been or are generally or at all acquiesced in by the public.

Farther answering, on information and belief, these defendants aver that the defence in the suits mentioned in said bill was weak and trivial, and that for this reason only the complainant prevailed.

Farther answering, the defendants admit that this defendant Harrison Harwood did testify as a witness on behalf of the defendant Reach, but they aver that his examination was merely superficial, and that no proper questions were propounded to him to bring out the facts, tending to prove want of novelty of the things claimed in the first and third claims of said reissue. These defendants took no interest in said suit, feeling sure that if they were sued they had a perfect defence, and did not aid in said suit, otherwise than to give a small sum of money, not

exceeding fifty dollars in all, out of sympathy with the defendant Reach, whom they had long known, and believed to be oppressed by the conduct of the complainant in selecting him instead of these defendants, the said Reach being of small pecuniary ability, and these defendants being well able to contest the matter, all which was then well known to this complainant.

Farther answering, these defendants deny that they have ever infringed upon or violated any rights of the complainant, or
11 otherwise damaged him, although they admit that they have since the 11th day of April, 1876, and for many years prior to that day, manufactured, used, and sold very large quantities of balls each having a cover formed of two pieces of leather secured to each other by a single seam, and also very large quantities of balls each having an outer covering composed of two pieces of leather, and each containing an inner ball, which inner ball also had a covering composed of two or more pieces of leather; the covering of the inner ball and the covering of the compound ball being applied independently of each other.

Farther answering the several interrogations propounded they say that the first and second have already been answered; in answer to the third, the defendant Harrison Harwood, says that he has no definite recollection as to the construction of any balls marked "Exhibit Bryans" and "Exhibit B"; he did testify as to sundry balls, but how they were marked, or whether put in evidence or not, he has no recollection; and he makes the same answer to the fourth interrogatory.

The defendants severally answer the fifth and sixth interrogatories in the negative except as above-mentioned.

Wherefore these defendants submit that the said complainant is not entitled to the relief prayed for in his said bill without this, that any other matter contained in said bill material to be answered unto and not herein sufficiently answered unto, confessed and avoided, traversed or denied, is true.

All of which these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HARRISON HARWOOD,
HENRY G. HARWOOD,
HARRISON HARWOOD, JR.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

On this 23d day of April, 1878, personally appeared the above-
12 named Harrison Harwood, Henry G. Harwood, and Harrison Harwood, jr., and severally made oath that they have read the above answer by them subscribed, and that the same is true to the best of their respective knowledge, information, and belief.

Before me,
[SEAL.] GEORGE O. G. COALE,
Notary Public.

At the same term the following amendment to bill of complaint was filed, namely:

Amendment to bill of complaint.—Filed April 27, 1878.

United States circuit court, district of Massachusetts. In equity.

LOUIS H. MAHN
vs.
HARRISON HARWOOD ET AL.

The complainant amends his bill of complaint heretofore filed in this cause, as follows:

Strike out the words "Henry Harwood," whenever the same occur in said bill, and substitute therefor the words "Henry G. Harwood," in each instance.

Strike out the words "Harry Harwood," wherever the same occur in said bill, and substitute therefor the words "Harrison Harwood, junior," in each instance.

J. C. FRALEY,
Of Counsel for Complainant.

APRIL 22D, 1878.

At the same term the following replication was filed, namely:

13 *Replication.—Filed April 27, 1878.*

United States circuit court, district of Massachusetts. In equity.

LOUIS H. MAHN
vs.
HARRISON HARWOOD ET AL.

The replication of Louis H. Mahn, complainant, to the answer of Harrison Harwood et al.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

J. C. FRALEY, AND
P. J. FLATLEY,
Of Counsel for Complainant.

This cause was thence continued to the present May term of this court A. D. 1878, when publication of the evidence is had and the cause is set down for hearing and fully heard on the thirty-first day of May, A. D. 1878, before the honorable Nathan Clifford, associate justice, and the honorable John Lowell, district judge, sitting together and holding this circuit court, and after due deliberation thereon had, the said honorable Nathan Clifford, associate justice, and the said honorable

John Lowell, district judge, sitting, the opinion of the court is read by the honorable John Lowell, district judge, and it is thereupon, to wit, Oct. 9, 1878, ordered, adjudged, and decreed that the bill of complaint in this cause be, and the same is, hereby dismissed with costs for the defendants taxed at , and that execution issue therefor according to law. From this decree the complainant, in open court, claims an appeal to the Supreme Court of the United States, and gives good and sufficient security that he will prosecute his said appeal to effect, and answer all damages and costs if he fails to make his plea good, and said appeal is allowed accordingly.

A true record.

JOHN G. STETSON, *Clerk.*

14 The following is the evidence used in the hearing of said cause, before said circuit court, namely:

United States circuit court, district of Massachusetts. In equity.

LOUIS H. MAHN
vs.
HARRISON HARWOOD ET AL.

EVIDENCE FOR COMPLAINANT.

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me.

CHAS. F. SLEEPER,
Special Examiner.

Present: Joseph C. Fraley, esq., and Patrick J. Flatley, esq., of counsel for complainant; James E. Maynadier, esq., of counsel for defendants.

BOSTON, *April* 23, 1878.

Complainant's counsel offers in evidence a Patent-Office copy of letters patent, reissue No. 7046, dated April 11, 1876, to Louis H. Mahn, as assignee of James H. Osgood (and the same is now put in evidence and marked Exhibit Mahn Reissue, C. F. S., sp'l ex'r); also a base-ball cut in half (now put in evidence and marked Exhibit B, C. F. S., sp'l ex'r); also a base-ball partially cut open (now put in evidence and marked Exhibit A, C. F. S., sp'l ex'r).

It is here admitted by defendants that the two balls offered in evidence by complainant, marked Exhibits A and B, were manufactured and sold by the defendants after April 11, 1876, and before the filing of the bill.

Attest:

CHARLES F. SLEEPER,
Special Examiner.

15 *Deposition of Louis H. Mahn.*

BOSTON, *April* 23, 1878.

Direct examination by JOSEPH C. FRALEY, Esq., of counsel for complainant:

Int. 1. What is your name, age, residence, and occupation?

Ans. Louis Henry Mahn; 32; Boston; manufacturer of base-balls.

Int. 2. Are you the complainant in this cause?

Ans. I am.

Int. 3. State what is your familiarity with base-balls and their manufacture.

Ans. I have been connected with the sale since 1865, and their manufacture since 1869. I handled the defendant's goods here for four years as a dealer, previous to manufacturing them. I began the manufacture of base-balls with James H. Osgood, and gradually increased the business up to the present time.

Int. 4. Are you familiar with all parts of the practical manufacture of base-balls at present?

Ans. I am.

Int. 5. Were you examined as a witness in the case of Mahn vs. Reach and Johnson, referred to in the bill of complaint? And, if yea, state whether or not you made a careful examination of two balls offered in evidence in said suit as Exhibit Bryans and Exhibit B.

(Objected to as immaterial unless the exhibits be produced.)

Ans. I was; I did.

Int. 6. State, if you know, whether or not said balls last referred to were the ones which were charged to infringe the reissued letters patent No. 7046, dated April 11, 1876, and the subject of controversy in said suit.

(Objected to as above, and also because the matter enquired about is one of record.)

Ans. They were.

16 Int. 7. Examine the balls now shown you (marked Exhibits A and B) and state how far the same resemble or differ from the balls Exhibit Bryans and Exhibit B, referred to in the last question.

(Objected to as wholly immaterial.)

Ans. They are materially the same.

Int. 8. Please examine Complainant's Exhibit, Mahn Reissue, and state whether or not you are familiar with the ball specified and shown therein.

Ans. I am. I have been manufacturing them since 1869.

Int. 9. State whether you ever manufactured and used such balls with the two covers in contact, as shown in the drawing of the said reissue.

Ans. I have.

Int. 10. State whether you have wrapped yarn between the inner and the outer cover to as great a thickness as is the outer wrapping of yarn in the balls Exhibits A and B.

Ans. I have made such balls with the same thickness of yarn outside the inner cover as that shown in the exhibits.

Int. 11. State what, if any, difference is produced upon the operation of the inner cover by wrapping the yarn around it as you have stated; and how far such balls resemble or differ from the balls having independent double covers in contact.

Ans. The effect is the same, except as regards deadness or liveliness. The ball with the covers in contact will be livelier than the ball with the yarn between the covers.

Int. 12. Look at the seams of the outer and inner covers of the balls Exhibits A and B, and state whether or not the shape of the pieces of leather of which the covers are composed in those balls has any definite, particular name in the trade.

Ans. I have never heard any. Two-piece cover I call it.

Int. 13. For how long have you known of the use of that form of cover?

Ans. Sixteen years.

Int. 14. Look at the card now shown you (now put in evidence and marked Exhibit Caution, C. F. S., sp'l ex'r) and state whence you received said card.

Ans. I do not know. I received it through the mail.

17 Cross-examination by JAMES E. MAYNADIER, Esq., of counsel for defendants:

Cross-int. 15. When did you first manufacture a base-ball with a cover formed of two hemispherical pieces, as described in the Mahn reissue?

Ans. In 1869.

Cross-int. 16. Where? Give the street and number.

Ans. In Boston, at No. 3 School street.

Cross-int. 17. What time in 1869?

Ans. I think in August.

Cross-int. 18. Did you then make more than one? If so, state how many, as near as you can.

Ans. I made more than one, but the exact quantity I cannot give.

Cross-int. 19. Did you make a few only at No. 3 School st. in the year '69, or did you manufacture them and put them on the market in that year?

(The words "put them on the market" objected to as irrelevant.)

Ans. We manufactured but few in '69, and they were not put on the market till '70. We sold some few, but did not generally introduce them that year.

Cross-int. 20. Are you positive that you made any before the year 1870 with a cover formed of two hemispherical pieces of leather?

Ans. To the best of my recollection, we did.

Cross-int. 21. Will you now swear that you did?

Ans. Having no dates to go by, I should say, as far as I can recollect, we did.

Cross-int. 22. Did you make any ball of this kind before you were in business with James H. Osgood, the patentee?

(Objected to as irrelevant.)

Ans. James H. Osgood and myself had consultations on different makes of balls for two years previous to '70, and we made some during our consultations before he did make it his business, or before we applied for a patent.

Cross-int. 23. Mr. Osgood testified in the suit against Reach that he was engaged with you in the manufacture of base-balls from

18 early in June, '71, to January 8, 1875, and that it was after June, '71, that he thought of and constructed the ball described in his patent, No. 127098, dated May 21, 1872, a Patent Office copy of which is now shown you (put in evidence by the defendants and marked Exhibit Osgood Patent, C. F. S., sp'l ex'r); will you now swear that Mr. Osgood was in business with you in the manufacture of base-balls before June, '71?

(Objected to as an inaccurate statement of Mr. Osgood's testimony in that particular, and the counsel for defendants is requested to point out to the witness in said testimony the words of Mr. Osgood which he refers to.

Defendants' counsel here refers the witness to Mr. Osgood's deposition, 3d and 4th questions and answers.)

Ans. I fail to see that he says that he made them after June, '71. I have no dates to go by, but I am quite positive that I am right.

Cross-int. 24. In your second deposition in the case against Reach, in answer to the 2d int. you say that you dealt in balls manufactured by Mr. Harwood from 1865 to 1869; do you mean that you bought no balls from H. Harwood & Sons during the year '69, or that you bought no balls from them after that year?

(Objected to as irrelevant and not cross-examination.)

Ans. I did buy balls of them in '69, and may have bought a few in '70, but am not positive as to that. Mr. Harwood, senior, came to our place in School street and found us manufacturing balls, and we received balls after that from them.

Cross-int. 25. Was Mr. Osgood then in business with you?

(Same objection.)

Ans. He was there at the time.

Cross-int. 26. Did you and Osgood buy many balls from H. Harwood & Sons, or only a few, after you commenced to manufacture balls?

(Same objection.)

Ans. The first year after Osgood came we used quite a large quantity; the second year but few.

Cross-int. 27. Were these balls bought by you for C. W. Jenks & Bro.?

(Same objection.)

19 Ans. They paid the bills, and were bought in their name; but the business was conducted in my name.

Cross-int. 28. How long were you and Osgood in business at No 3 School street?

Ans. About two years.

Cross-int. 29. Were all the balls you manufactured there covered as described in Exhibit Osgood Patent?

Ans. They were not.

Cross-int. 30. Where did you go from No. 3 School street?

Ans. To 49 Temple Place.

Cross-int. 31. How long were you and Osgood together in business there?

Ans. But a short time, a few months.

Cross-int. 32. Is Osgood your brother-in-law?

Ans. No, sir.

Cross-int. 33. What relation are you?

Ans. My wife is a niece of his.

Cross-int. 34. Do you believe he is wrong when he testifies that he was engaged with you in the manufacture of base-balls to January 8th, 1875?

Ans. I have no record of the time he left; his statement may be correct.

Cross-int. 35. Did you ever buy any balls from H. Harwood & Sons on your own account?

(Same objection.)

Ans. Not in my name. I don't recollect positively whether any of the balls were billed to me alone or not.

Cross-int. 36. All the balls you ever bought of H. Harwood & Sons were billed to N. Bangs Williams, or C. W. Jenks & Bro., so far as you now recollect, were they not?

(Same objection, and further, as incompetent.)

Ans. All the balls I ever bought were billed in those two names, I think.

Cross-int. 37. How long were you with N. Bangs Williams, and when did you leave?

(Same objection.)

Ans. About three years; left in the year '68, I think.

20 Cross-int. 38. Wasn't it '69?

(Same objection.)

Ans. That I cannot tell.

Cross-int. 39. When did you become interested with C. W. Jenks & Bro., or have any business relations with them in the manufacture of base-balls?

(Same objection.)

Ans. I think 1868.

Cross-int. 40. Was it immediately after leaving Williams? If not, how soon after?

(Same objection.)

Ans. Within two months.

(Noon recess.)

Witness here states that he is now positive that he went to 33 School street in the month of August, and he saw from the windows of that building the parade of the Ninth New York Regiment, and that he has just examined a file of the Boston Herald, and finds from that that that parade occurred on the 18th of June, 1871, and that therefore he will testify that he was there at least as early as August, 1870.

Cross-int. 41. You have said that you may have bought a few in 1870. Please state now whether you bought many or few in 1870, and whether you bought any in 1871, acting for or on account of C. W. Jenks & Bro.

(Same objection.)

Ans. Justified by the above change of date, I should say we did buy a considerable quantity in '70, with possibly a few dozen in '71.

Cross-int. 42. Harwood and Son's books show that you ordered for Jenks & Bro. about $2,000.00 worth of balls in the year 1870, and about $3,600.00 worth in 1871. If you were satisfied of this fact, i. e., the sale to Jenks & Bro. of $3,600.00 worth of balls in '71, would it not convince you that Mr. Osgood is correct in his third answer, as to the date June, '71?

(Same objection.)

Ans. I think he is just as much likely to be mistaken as I am, because he asked me about it, and we had no way to place it, as the books were lost, except as I have mentioned above.

21 Cross-int. 43. You know, don't you, that you didn't buy $3,600.00 worth of balls, on account of Jenks & Bro., from Harwood & Sons, the year after you and Osgood commenced the manufacture of base-balls?

(Same objection.)

Ans. I don't know that I didn't buy that quantity, but the best of my knowledge told me that I did not.

Cross-int. 44. Isn't it the fact that you and Osgood didn't get but a few, if any, balls on the market until the spring after you commenced to manufacture?

(Same objection.)

Ans. No; for the same season we began to manufacture we sold several bills to dealers of our manufacture.

Cross-int. 45. All the goods manufactured by you and Osgood were sold through Jenks & Bro., were they not?

(Same objection.)

Ans. Not all. Those goods that we charged on time were sold through them. Cash sales I didn't consider so.

Cross-int. 46. When did you first use the name "American Base-Ball Co.?"

(Same objection.)

Ans. I think, 1874.

Cross-int. 47. When was the Osgood patent applied for? I see that you have signed it as a witness.

(Objected to as incompetent.)

Ans. In 1871.

Cross-int. 48. Were you with Williams when he failed?

(Objected to as irrelevant.)

Ans. I was.

Cross-int. 49. And the next fall you sold boxes for Jenks & Bro., did you not? Especially boxes for the Christmas trade.

(Same objection.)

Ans. I did for several years handle boxes in the fall, before and after. The first fall I sold direct to Jenks & Bro. was the fall after Williams failed.

Cross-int. 50. How many of these balls, with covers in two hemispherical pieces, did you and Osgood make before the patent was
22 applied for, as near as you can state? And state also whether any were sold to dealers before the patent was applied for.

(Same objection.)

Ans. To the best of my knowledge, 25 to 50 doz. They were all sold, being made to order. I can't state definitely, because my books, together with a case of balls, were lost in conveyance between Boston to Jamaica Plain.

Cross-int. 51. How long before Osgood applied for the patent did you commence to make these hemispherical piece covered balls?

(Same objection.)

Ans. The fall before the application for the patent, the best of my knowledge.

Cross-int. 52. Then you were mistaken when you swore that it was in the fall of '69, were you not?

(Same objection.)

Ans. By application to the Herald office, I found the date to be '70 instead of '69.

Cross-int. 53. Read the first claim in Exhibit Mahn Reissue, and state whether you believe that claim to be good or bad; i. e., whether the base-ball cover which is on the balls Exhibits A and B, is or is not "a base-ball cover formed of two pieces of leather secured to each other by a single seam."

(Objected to as incompetent and irrelevant.)

Ans. It is a good claim. It (the cover in Exhibit A and B) is a base-ball cover formed of two pieces of leather secured to each other by a single seam, but not as specified in the patent.

Cross-int. 54. Do you think that the two coverings on Exhibits A and B are the same as specified in the patent?

(Same objections.)

Ans. I do in the third claim.

Cross-int. 55. But you also think that the outer one is not the same as specified in the patent, do you not?

(Same objection.)

Ans. I do think it applies as much in claim 3 to the patent as any other cover would.

Cross-int. 56. How came you to allow that first claim to go into the reissue, knowing as you did that base-balls, each having a cover
23 formed of two pieces of leather secured to each other by a single seam, had been in the market many years before 1871? Please explain fully.

Ans. I don't consider Exhibit B a single-seam ball. It might be called endless seam, and as claim 1 covers a hemispherical cover, I claimed the right to insert it.

Cross-ins. 57. What kind of seam did you mean by the seam which you described in the reissue as "a meandering line sufficiently long to make two great circles?"

Ans. I consider Exhibits A and B a meandering line with two great circles around the ball. This applies not to the hemisphere covers.

Cross-int. 58. You knew, when you applied for that reissue, that the two-piece cover, secured to each other by a single seam, as shown in the outer covers of Exhibits A and B, were well known many years before '71, and that balls with such covers were in the market as early as 1865, and remained in the market and were sold in large numbers during the years '65 to '70, both inclusive?

Ans. I did.

Cross-int. 59. You don't believe that the stitch spoken of in the second claim of your reissue is found in Exhibits A and B, do you?

Ans. No; it's not there.

Cross-int. 60. Do you think that either of the two pieces of either of the covers of Exhibits A and B is of the "proper shape to form one hemisphere of the cover?"

Ans. I do.

Cross-int. 61. Do you think that either of these pieces was ever "thoroughly wet and while wet put into a * * * mould * * * and strongly compressed therein by a * * * plunger," and "allowed to remain in the mould till somewhat dry;" or that either of these pieces have been in any way shaped by moulding?

Ans. I certainly do think they have been put in shape by moulding on the form of the ball itself; also that they have been wet.

Cross-int. 62. Do you think these covers have been applied in any different way from what they were applied during the years 1865 to '70? I mean the outer covers of Exhibits A and B.

Ans. No; I think the application is the same.

24 Cross-int. 63. What do you think is the meaning of the words "substantially as specified," in the first claim of your reissue?

Ans. "Stout leather is then cut to the proper shape to form one hemisphere of the cover."

Cross-int. 64. And what do you think is the meaning of the words "substantially for the purpose specified," in the first claim of your reissue?

Ans. To resist the strain in every direction.

Cross-int. 65. What do you think is the meaning of the words "substantially as specified," in the third claim of your reissue?

Ans. Two of these hemispheres or covers are then placed upon a ball of yarn by sewing them tog'ther, with or without yarn between.

Cross-int. 66. And what do you think is the meaning of the words "substantially for the purpose specified," in the third claim of your reissue?

Ans. To put two leather covers on a game or regulation ball, with or without yarn between, independent of each other.

Cross-int. 67. Do you believe that the balls, Exhibits A and B, have

either of them a covering "composed of independent inner and outer coverings made up of hemispherical sections, the seams of the inner and outer covers arranged relatively to each other to break joints?"

Ans. The Exhibits A and B have both independent coverings, and the seams of the inner and outer cover do break joints, but the covers have not hemispherical sections.

Cross-int. 68. What is the use of having two covers in contact, as shown in the Mahn reissue?

Ans. To keep the ball in a spherical shape, and to make it lively.

Cross-int. 69. How does a ball with two thin covers in contact differ, if at all, from a ball made in the same way exactly, except that it has only one thick cover; supposing the strength of the thick cover to be more than that of either one of the thin covers?

Ans. If the two thin covers are put on to break joints, the shrinkage of two thin ones breaking joints would be more than even a thicker cover single, and would naturally make the ball more firm and livelier.

25 Cross-int. 70. Will you testify that a ball with two covers, independent of each other, is livelier than a ball exactly like it, except that it has only one cover?

Ans. If the rubber and yarn are of the same quality, I say the ball with two covers in contact is livelier than a single cover.

Cross-int. 71. I mean two balls in which the rubber is of the same quality and of the same size; the yarn of the same quality and the same weight, and wound just the same in both; but two covers independent of each other on one, and only one cover on the other. Will you swear that you believe that there would be any difference between these two balls in liveliness?

Ans. I will. From practical knowledge, I believe that two independent covers would be the liveliest.

Cross-int. 72. Do you think the difference would be perceptible in actual use, or any other way?

Ans. I do.

Cross-int. 73. Do you think it is important to have the seams break joints, or do you agree with Mr. Osgood in his fourth answer about that, viz, "that this detail might safely be disregarded"?

Ans. I should prefer to have it break joints, but don't consider it any vital importance.

Cross-int. 74. Does breaking joints have anything to do with the liveliness of the ball?

Ans. Very slightly; I don't think it would be noticed if left out.

Cross-int. 75. Can you explain why?

Ans. The stretch of a cover, which naturally comes across the narrow part; the shrinkage would also be that way, and breaking joints, the contraction would be from all sides alike.

Cross-int. 76. Is it possible to know, in making balls like Exhibits A and B, whether the covers break joints or not?

Ans. The only way that could be discovered would be the condition the ball was in after a game or by cutting; but it would be very hard to find one that did not break joints.

Cross-int. 77. Do you believe that the use of two independent covers always makes the ball livelier than it would be if only one cover were used?

26 Ans. Not always. For instance, if with the same rubber and same yarn the cover were placed half way between the rubber and the outer cover, the ball would probably be deader than if a sin-

gle cover were used; but we cannot get the same regularity of dead and liveliness with a single cover that we can with a double.

Cross-int. 78. Then, if I understand you, you believe that where the two covers are in contact the ball is made livelier, and where the ball is made by winding yarn on a small ball, and then covering, the ball is made deader. Am I right?

Ans. You are, as far as my practical knowledge goes.

Cross-int. 79. Do you know of any other effect which you regard as important or desirable, produced by the use of two covers, independent, but in contact?

Ans. Keeping it in shape.

Cross-int. 80. Doesn't that depend altogether upon the position of the seams in the ball described in your reissue?

(Witness asks, "Do you mean breaking joints?"

Counsel answers, "Seams so arranged that the two hemispheres of one of the covers shall be in contact, one with the upper and the other with the lower half of the ball, and the two hemispheres of the other cover shall be one over the right half and the other over the left half of the ball.")

Ans. No; I do not altogether. It depends more in the way that the inside cover is put on, and it must be independent; if caught only with two stitches it will throw the ball out of shape.

Cross-int. 81. Do you know any reason why it should have that effect?

Ans. Practical experience, and samples seen and cut open to discover why they went out of shape.

Cross-int. 82. Don't you know that the ball can't change its shape unless the covers stretch unequally?

Ans. No, I don't; for I have found in balls where the two covers were in contact and of good shape after use, such balls being dyed red, that the line of the red color under the seam was moved in some cases an inch out of the way.

Cross-int. 83. How many balls have you made and sold, with
27 hemispherical covers, each section formed in a mould before it was applied to a ball, during the last year, 1877?

(Objected to as irrelevant.)

Ans. 50 to 75 dozen.

Cross-int. 84. How many during '76?

(Same objection.)

Ans. Well, I should say about the same.

Cross-int. 85. How many during '75, '74, '73, and '72?

(Same objection.)

Ans. Well, I should say in the neighborhood of 50 dozen each year. That's what I generally made up of that style of ball. I have to guess at it.

Cross-int. 86. Were these mainly single covers, or with two covers? State what proportion of each, during the years from '72 to '77, both inclusive.

(Same objection.)

Ans. I think the quantity was in favor of double covers, although I cannot state positively, as I have never looked it up on my books.

Cross-int. 87. Do you mean a few more with two covers than with one cover?

(Same objection.)

Ans. I do; as far as I can recollect.

Cross-int. 88. What proportion of these balls with two covers had the covers in contact?

(Same objection.)

Ans. Three-quarters of them.

Cross-int. 89. Do you know of any other effect produced by the use of two covers, that you consider important or desirable, except the two you have mentioned?

Ans. Keeping its sphericity, liveliness, or deadness, and uniformity. That is all I have to claim.

Cross-int. 90. Does it make any difference, in your opinion, so far as concerns keeping the shape of the ball, whether the ball have a core or not of rubber or other material different from yarn?

Ans. No, sir.

Cross-int. 91. Does it make any difference, in your opinion, so
28 far as concerns keeping the ball in shape, whether the two covers be in contact, or whether there be a layer of yarn between them, as in Exhibit A?

Ans. No, sir. In my practical experience I find there is no difference; for I have handled every ball after the games the Bostons have played for four years.

Adjourned.

BOSTON, *April* 24, 1878.

Cross-int. 92. How many of the balls with a cover formed of two hemispherical pieces were sewed with the stitch described in your reissue? And when did you cease using that stitch?

Ans. About half the quantity we sold. We are still using the same stitch in some cases.

Cross-int. 93. Did you ever use that stitch with any other covers except the kind shown in the drawings of your reissue?

Ans. Yes; we used it on the figure 8 pattern, in quite a number of cases.

Cross-int. 94. Didn't you buy numbers of balls from Harwood & Sons before or during 1870, each with a cover in two pieces of the figure 8 pattern, like the outer covers on Exhibits A and B, and have your name stamped upon those balls and sell them?

Ans. I think I did buy balls of that pattern before and during 1870, single covers only; but in all cases where my name was stamped I done the stamping myself.

Cross-int. 95. That is, you bought them plain, without a stamp, and you stamped them to suit yourself?

Ans. I did.

Redirect examination:

Int. 96. Referring to your testimony as to the first claim of your reissue, what object, if any, is obtained by making a base-ball cover, formed of two pieces of leather secured to each other by a single seam, of the shape shown in the patent, and wherein does a seam of that shape differ from the seam of the shape shown in the outer cover of Exhibits A and B?

Ans. There is about twice the amount of sewing in the Exhibits
29 A and B that there is in the first claimed ball of the reissue, and the object is to save sewing.

Int. 97. Have you ever made and used double-cover balls made precisely as shown in the drawing and described in the specification of the

reissue, that is to say, having the covers made of hemispherical sections, and applied to the ball independently of each other, but in contact?

Ans. I have made them, used them, and played with them.

Int. 98. Have you ever made balls such as described in the last question, except that they had yarn between the covers?

Ans. I have made them, used them, and played with them.

Int. 99. Have you ever made balls with an independent double covering, each of which was composed of two pieces of leather, and in contact with each other, but the shape of the pieces being the shape shown in Exhibits A and B.

Ans. I have made, used, and played with them.

Int. 100. Have you ever made balls such as described in the last question, except that there was a wrapping of yarn between the covers, say as thick as that shown in Exhibit A.'

Ans. I have made, used, and played with them.

Int. 101. You have described four kinds of double-cover balls. Please state, from your experience in the manufacture and use above referred to, whether there is or is not any difference between said kinds so far as relates to the action of the independent double covering.

(Objected to, because the witness has fully answered as to the difference between balls with two covers in contact, and double or compound balls, that is, a ball made by wrapping yarn over a complete ball of small size, and then applying a cover; and also because it is obvious that there is a material difference between the cover of the figure 8 pattern and the cover made of two hemispherical pieces of leather.

The witness' attention is called to the fact that the question is only whether there is any difference in the action of the independent double covering in the four kinds of balls referred to.)

Ans. There is no difference between the action of the four descriptions given. This I know from personal experience as a manufacturer and player.

30 Recross-examination.

Cross-int. 102. Please explain what you mean by saying that there is no difference between the action of the inner cover when two covers are used in contact and the action of the cover of the small ball when built up and recovered; which is what you have said in answer to Int. 100? I put this question for the reason that in your cross-examination you swore that there was a difference.

Ans. There is no difference as regards the balls of the four descriptions keeping their shape; there is a difference as regards liveliness and deadness.

Cross-int. 103. Please read the letters now shown you (put in evidence and marked Exhibits Letters 1, 2, 3 and 4, C. F. S., sp'l ex'r), and state whether they were written by you or not.

Ans. Three of them, Nos. 1, 2 and 4, I recognize as my writing. The other, No. 3 was written by James H. Osgood or William H. Osgood, James H., I think, by my authority.

Cross-int. 104. What do you think is the meaning of the words "single seams," in Exhibit Letters 3.

Ans. Single-cover balls with the seam like Exhibits A and B.

LOUIS H. MAHN.

Attest: CHAS. F. SLEEPER,

Special Examiner.

(It is here admitted that the card marked Exhibit Caution is one of the postal cards printed for and circulated by the defendants.)

Complainant closes.

Attest:

CHAS. F. SLEEPER,
Special Examiner.

31 United States circuit court, district of Massachusetts. In equity.

LOUIS H. MAHN
vs.
HARRISON HARWOOD ET AL.

EVIDENCE FOR DEFENDANTS.

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me.

Charles F. Sleeper, special examiner.

Present, Joseph C. Fraley, esq., and Patrick J. Flatley, esq., of counsel for complainant; James E. Maynadier, esq., of counsel for defendants.

Deposition of Harrison Harwood.

BOSTON, *April* 24, 1878.

Direct examination by JAMES E. MAYNADIER, esq., of counsel for defendants.

Int. 1. What is your name, age, residence, and occupation?

Ans. Harrison Harwood; 63; Natick, Mass. I am chairman of the Middlesex board of county commissioners. My duties there employ most of my time. I am also one of the firm of H. Harwood & Sons, in the business of manufacturing base-balls, at Natick.

Int. 2. When did you first commence the manufacture of balls?

32 Ans. In a very small way in the latter part of the year 1858. In the year 1859 we began to make it a permanent and regular business, and have so continued, increasing our business from that time to this.

Int. 3. Please produce sample balls, representing fairly all the kinds of balls manufactured by your firm since April 11, 1876, with a single cover formed of two pieces of leather secured to each other by a single seam. My question relates solely to the cover, and has nothing to do with the interior construction of the ball.

Ans. I produce seven balls, (now put in evidence and marked Exhibits 60, 61, 62, 63, 64, 65, and 68, C. F. S., sp'l ex'r.) These are our regular goods.

Int. 4. Now produce like samples, that is, made by your firm since April 11, 1876, with two covers, each in two pieces, applied independently of each other, but in contact.

Ans. I produce this (now put in evidence and marked Exhibit 56, C. F. S., sp'l ex'r.)

Int. 5. Now produce like samples made by building up a small ball and then recovering it, the cover of the small ball and also the cover of the compound ball being in two pieces of leather joined together by a single seam.

Ans. I produce this, (now put in evidence and marked Exhibit 57, C. F. S., sp'l ex'r).

Int. 6. Have you manufactured any other compound ball with the cover of the inner ball, or the cover of the compound ball, differing from Exhibit 57, since April 11, '76, in the regular course of business? If so, please produce samples of all such balls.

Ans. We have. I produce this, (now put in evidence and marked Exhibit 58, C. F. S., sp'l ex'r), differing in this, that the inner ball has a cover of four pieces of leather instead of two.

Int. 7. When did you first know of balls with two covers independent of each other, but in contact, the seams breaking joints? And where was this, and by whom were such balls manufactured, and to what extent? and produce, if you can, a sample of such balls.

Ans. Such balls were manufactured by our firm as early as 1859, and continuously in some styles ever since. I produce one (now
33 put in evidence and marked Exhibit Double Cover No. 1, C. F. S., sp'l ex'r), also this (now put in evidence and marked Exhibit Cutler 2, C. F. S., sp'l ex'r). This last sample we manufactured to a considerable extent for four or five years from '59, when the style of game was changed in New England to that now known as the National game. The style Double Cover No. 1, we made thousands of dozens annually, from the year '59 to '65 or '6.

Int. 8. When did you first have knowledge of base-balls with covers formed of two pieces of leather secured to each other by a single seam? Where and by whom were such balls manufactured, and to what extent? And produce samples of such balls.

Ans. I should say before '65, occasionally a single ball. I should say as early as '62 we made balls like this, (now put in evidence and marked Exhibit "New England" Ball 4, C. F. S. sp'l ex'r) at Natick. We made a good many dozens. It would be mere guess work to say how many, but they were the balls then used by organized clubs to play what was called the New England game.

(Noon recess.)

Int. 9. When did you commence to use that pattern of two-piece cover, largely?

Ans. I should think in '65 or '6.

Int. 10. Since that time, what has been the prevailing pattern of cover?

Ans. This style known as figure 8 pattern, is used wholly in all our larger goods, and has been for the past eight or ten years.

Int. 11. Please explain more fully what style of balls have been manufactured by your firm from 1859, with two covers in contact, the seams breaking joints?

Ans. Originally we manufactured principally for our wholesale trade five different sizes covered in calf, like Exhibit Double Cover 1; and the same sizes covered in buckskin. The largest two sizes of each were almost wholly covered with two covers immediately in contact with each other. This continued perhaps five or six years. During the game time we covered considerable quantities of what was known as the "New England" ball, some of them with covers in contact and the others
34 with covers separated. From the year '65 to '69 or '70, we covered balls like Exhibit 56 to some extent. From that time to this we have covered but very few in that way.

Int. 12. Can you state how many balls with two covers, each in two pieces and in contact with each other, like Exhibit 56, you have manu-

factured since April 11, 1876, and what the demand has been since that time for balls of that description?

Ans. I cannot, but my impressions are that we have made but very few indeed. I understand that there is no call for that class of goods.

Int. 13. When did you first know of balls, each made by taking a complete ball with a leather cover, building it up to a larger size and then covering it with a leather cover. Where and by whom were such balls manufactured, and to what extent? And produce samples of such balls.

Ans. I knew of such balls the first year of our business as ball manufacturers, certainly as early as 1859. They were manufactured by us to a considerable extent so long as the demand for the "New England" ball lasted, which was as late as '66. These are samples, (now put in evidence and marked Exhibits Double Ball 1, and New England Ball 1, C. F. S., sp'l ex'r).

Int. 14. Which did you know earliest; the double ball with each cover in four pieces, (like that marked New England Ball 1), or with each cover in two pieces, (like that marked Double Ball 1)?

Ans. I think the ball with the cover in four pieces was known and used by us generally, for a year or two before we used the two-piece pattern.

Int. 15. In your manufacture of double balls, has the outer cover of the compound ball been always of the same pattern as the cover of the inner ball? If not, describe the two covers as used by you prior to the year 1870; if you used different covers on the compound ball from that used on the inner ball before that year?

Ans. They have not been of the same pattern uniformly. In the first years of our business they were of the same pattern principally, that is, the four piece pattern like Exhibit Double Cover 1. Later, say from '65 to '70, the inner cover has generally been of four pieces and the outer cover of two pieces.

Int. 16. How many double balls with covers each of the two-piece pattern (as shown in Exhibit Double Ball 1) did you manufacture and sell, at a low estimate, before the year 1870, not including that year?

Ans. Well, you can say ten barrels a year for five years previous to 1870.

Int. 17. Mr. L. H. Mahn has testified that two balls, each precisely alike in every respect, except that the one had a double cover, the two covers independent of each other, and the other a single cover, would differ from each other; the former being more lively and the other more dead, and that the former would keep in shape much better than the latter. State your opinion upon these points, assuming first that the covers of both balls are of the four-piece pattern; secondly, that the covers of both balls are of the two-piece figure 8 pattern, and thirdly, that the cover of the single ball is of the two-piece figure 8 pattern, and the outer cover of the double cover ball of the two-piece figure 8 pattern, and its inner cover of the four-piece pattern.

Ans. I should differ from Mr. Mahn, that a ball with double covers is more elastic than a ball with single cover. If his premises are correct then three covers, six, ten, and finally a ball composed of all leather should be very much more elastic than a ball composed of yarn with a single cover. I think any unskilled person in the use of balls would be likely to know that yarn is more elastic than leather. My opinion is that there would be no perceptible difference between two covers in contact and a single cover of equal thickness to the two, in keeping the ball in

its true shape; but if any difference it would be in favor of the double cover. I shouldn't be willing to say that in the difference of the shape of the patterns there would be any perceptible difference in keeping the ball in shape.

Int. 18. When was it that you were at Mahn & Osgood's place of business, No. 3 School street? and state whether they were then well under way, or just commencing to manufacture.

(Objected to as irrelevant.)

Ans. I should say it was late in the summer or early in the fall of 1871. To all appearances they were then just commencing to manufacture.

36 Int. 19. Please reconsider the latter part of your 17th answer, and state whether a ball with a four-piece cover is not likely to become elongated in one direction in use, and how this is if the cover be of the two-piece figure 8 pattern.

Ans. I should say that if a ball cover of the four-piece pattern should stretch more in one direction, it would be in a direction lengthwise of the seams. In the other case I don't know as there would be any chance for it to stretch more in one direction than in another.

Int. 20. Please describe, and if you think it necessary, produce samples of all the different patterns of covers you have used yourself or known to be used on balls.

Ans. The first pattern we used was a four-piece pattern, next comes the figure 8 pattern, which is our common pattern at the present time. Next comes this one-piece pattern with four points, of which I produce metal pattern used in cutting out leather covers (now put in evidence and marked Exhibit Metal Pattern 1, C. F. S., sp'l ex'r). Now I produce a one-piece metal pattern much like the other one (put in evidence and marked Exhibit Metal Pattern 2, C. F. S., sp'l ex'r). We have also used a three-piece and a six-piece pattern like the four-piece except in the number of pieces. We tried to use a three-piece pattern different from the other, two of the pieces being disks and the third piece a band around the ball, but found it worthless. These are all the patterns that we used that I think of. I have known the hemispherical cover, such as described in Mahn's reissue. I have known another (I think it is in use at the present time by a party in New York) in two pieces, different from any we have had here, and hard to describe.

Int. 21. What is the value of the hemispherical two-piece pattern described in Mahn's reissue, in your opinion; and what are the objections to it, if any?

Ans. I should consider it entirely worthless to us, since according to my best information it is not wanted by the trade or by practical players; and our object is to make balls that will sell. You ask what the objections are. I have stated them, but you might add, that fault is found with them on account of their being uncomfortable to handle,

37 and my opinion is, that a crimped cover will not retain its shape under hard usage as well as one not crimped.

Int. 22. How about economy in cutting the covers?

Ans. That is another objection. It is a very wasteful pattern to cut by.

Int. 23. Did you ever see a ball having the cover sewn with the double herring-bone knotted lock-stitch described in the Mahn reissue?

Ans. I have. Such balls have been shown me; but I never took sufficient interest to know how the stitch is produced.

Int. 24. Is that stitch of any value in ball making, in your opinion?

Ans. As far as advised it amounts to nothing.

Cross-examination by JOSEPH C. FRALEY, Esq., of counsel for complainant:

Cross-int. 25. (Referring to Exhibits numbered 56, 57, 58, 60, 61, 62, 63, 64, 65, 68.) Are these balls selected from your ordinary stock, or were they manufactured specially for the present purpose?

Ans. They were all taken from our ready-made stock of goods on hand, every one of them, none of them made for the present occasion.

Cross-int. 26. Do you know what is the material of which the interior is composed in Exhibits 56, 57, and 58?

Ans. I suppose I do. They are all composed of a rubber centre, yarn wrapping, and leather covers.

Cross-int. 27. Laying aside the character of the stitch and the shape of the pieces, is there any difference between ball Exhibit 56 and the ball specified and shown in the Mahn reissue?

Ans. That is laying aside a very material part of the ball. There is a difference in the beauty, the service and the pleasure of handling two balls.

Cross-int. 28. Is this opinion mere guess work, or based upon experience with both?

Ans. My common sense tells me that the first two items are true, and common report enlightens me as to the third.

38 Cross-int. 29. From whence come these differences, if not from the character of the stitch and the shape of the pieces of the covers?

Ans. In the first instance, as to the beauty of the lines and general appearance, that is self-evident. In the matter of service, common report and common sense teach me that it must be true. The raising of a single seam in one direction, always in the centre of the ball, is said to be uncomfortable and ugly to catch.

Cros-sint. 30. Question repeated.

Ans. They do come in part from the shape of the pieces and position of the seams.

Cross-int. 31. Then I understand you to mean that aside from these last-mentioned causes, there is no difference between Exhibit 56 and the ball specified and shown in the Mahn reissue?

Ans. I have not said so. There are other differences. One important one is the expense of manufacturing, particularly on account of the wasteful shape of the pattern to cut the stock by for the covers.

Cross-int. 32. Is there any substantial difference between the rubber centres?

Ans. I don't know of any difference.

Cross-int. 33. Is there any substantial difference between the yarns, or the methods of winding them?

Ans. Well, not necessarily.

Cross-int. 34. Then such differences as you have referred to, do arise solely from the shape of the pieces of the cover, or from the character of the stitch?

(Objected to, because it assumes that the pieces of leather composing the cover in the ball described in the Mahn reissue are not wet and shaped by moulding.)

Ans. There is also a greater liability of the ball with the patented cover (I mean patented in the Mahn reissue) to get out of true by the cover stretching where it has been previously crimped. I do not think of other differences now.

Cross-int. 35. Referring to Exhibit Double Cover 1, do you mean us to understand that that particular ball was made in 1859?

Ans. No, sir; I do not.

39 Cross-int. 36. Was it not made in your factory lately, and for the purposes of this case?

Ans. It was; and that kind of ball now is entirely out of date. We have made none of them except this sample for several years.

Cross-int. 37. Was it made by yourself personally, or under your eye?

Ans. It was not made by myself personally, but it was made at our factory. I saw the cover cut. I did not see it sewed on.

Cross-int. 38. How, then, do you know that the covers were independent of each other, as stated in your answer to int. 7?

Ans. From the fact that we never attach them to each other except by accident, and this sample being cut, shows no symptoms of the covers being attached to each other.

Cross-int. 39. No other reason?

Ans. I don't know of any other necessary.

Cross-int. 40. Does it not require very considerable care in stitching the outer cover of such a ball to prevent there being attachments at some points?

Ans. It does require care, and accidents of that kind do occasionally happen.

Cross-int. 41. What grade of goods would you term such balls as Exhibit Double Cover 1?

Ans. We should call them a low class of goods at the present time. Formerly they stood higher in the list.

Cross-int. 42. Do you mean us to understand that Exhibit Cutler 2 was actually made by you as long ago as 1859?

Ans. Do you mean this ball? Not a bit of it; no, sir.

Cross-int. 43. Was not it also manufactured specially for this case?

Ans. It was manufactured for this case to represent the style of goods common with us between the years say '62 and '66. It was then called the New England Game Ball or Regulation Ball.

Cross-int. 44. The same question as to New England Ball 4, Double Ball 1, and New England Ball 1.

Ans. They were all made for this occasion.

Adjourned.

40 BOSTON, *April* 25, 1878.

Cross-int. 45. Of what material is the interior of Exhibit Double Cover 1 composed?

Ans. It should be, and no doubt is, composed of rubber centre, then of buckskin gimpings or scraps, and yarn.

Cross-int. 46. When you say "it should be," you mean that to fairly represent the kind of ball which it is intended to represent it must be?"

Ans. Yes; I do mean so. I mean to say that that was our usual way of making that class of goods.

Cross-int. 47. Of what material is the interior of Exhibit Cutler 2 composed?

Ans. It is composed of a centre of 1 oz. to 1¼ oz. of small shot, enclosed in a buckskin cover, then wound or wrapped very lightly or softly with yarn to the required size, and then covered with two covers, each in two pieces and put on independently of each other.

Cross-int. 48. How came you to put the two covers on balls like Exhibit Double Cover 1? Would not a single perfect cover have been sufficient for all necessary purposes in that grade of goods?

Ans. It was done to improve the quality and general appearance of the goods. A single cover put on tightly in a damp condition would always show the lines of the yarn wrappings on the outside of the ball. This is overcome by the inner cover. The inner cover also has a tendency to make the ball last or wear longer.

Cross-int. 49. Was not the second or outer cover put on these balls because they were not perfect enough to sell well; or did you always put the two covers upon your gimping balls?

Ans. It was not the purpose in any instance, that I remember now. We did not always put two covers on the gimping balls, but generally did so on the largest two sizes.

Cross-int. 50. For what purpose is the yarn wrapping and string put around the gimpings of that ball?

Ans. It is mainly for the purpose of holding the gimpings together until covered with leather. The gimpings are taken in a mass, and instead of being wound up to the required size, are wound and compressed down by the twine until they are brought to a proper diameter.

41 Cross-int. 51. Please describe the interior composition of Exhibit New England Ball 4.

Ans. New England Ball 4 is composed of a loaded centre, that is to say, either shot or tea lead (those are the usual kinds of loading), covered or enclosed in a bag, then wound lightly with yarn to about half the required diameter and covered with leather; then wrapped to full size with yarn or yarn and rubber thread, and finally covered with leather. That is what we call a double ball, in distinction from a double-covered ball.

Cross-int. 52. What is the object of the inner covering of what you call a double ball, as distinguished from a double-cover ball?

Ans. The object of the covering to the inner ball is always to keep the centre steady, as, if a ball with a loaded centre were to work out of true, the ball would not answer to force in a right line. The inner cover will effectually keep a ball in a round shape and confine the centre. The double cover—one cover immediately on the other—has no tendency whatever, more than a single cover, to keep a ball round, or to keep the centre in place.

Cross-int. 53. Where the centre is of lead and the wrapping is loose or soft, is there not a very great tendency to shift, unless an inner cover, such as that of New England Ball 4, be used?

Ans. There is; and the same holds true of a centre composed of rubber or any other heavy substance.

Cross-int. 54. What then is the object of the double covering in Exhibit Cutler 2, if, as you say, "it has no tendency whatever, more than a single cover, to keep a ball round, or to keep the centre in place?"

Ans. It would to some slight extent improve its appearance and improve its batting service, as these balls (Cutler 2) were usually made with a substantial inner cover, and when the outer cover was worn off the inner cover would do some little service.

Cross-int. 55. Was it not the feature of what you have called the New England game, as distinguished from the present or National game, that in the former the ball was thrown at the player with the intention of striking him?

Ans. It was.

42 Cross-int. 56. Referring to Exhibit Double Ball 1, state what is its interior composition.

Ans. It is undoubtedly composed of a rubber core, built upon with

gimpings and yarn, and smoothed off with paper wrapped around it, then covered. It is then wound up to a larger size and covered again.

Cross-int. 57. Is this the sort of ball which in your testimony in the Reach case you called "seconds?"

Ans. It is.

Cross-int. 58. And what you there stated respecting such balls is true, viz, that you had no object in a second cover, or a ball within a ball, at the start; and that you did not make them double with any fixed intention at the start to do so, but merely because it was a convenient way of disposing of balls whose first covers were not first class?

Ans. That is true so far as relates to what we call "seconds."

Cross-int. 59. Did you, at that time or at any time prior to the year 1872, use as a trade name or trade designation any such terms as "double ball," or double-cover ball?"

Ans. I cannot say.

Cross-int. 60. If you had done so would you not be likely now to remember it, in view of the careful researches you seem to have made into the character of the balls you made and sold from 1859 on?

Ans. I might not. Neither have I myself made careful researches or spent time in examining matters of our business since 1859.

Cross-int. 61. Do you mean us to understand that you have not made any researches in order to give the testimony which you have given as to the extensive sale of balls Exhibits Double Cover 1, Cutler 2, New England Ball 4, New England Ball 1, and Double Ball 1?

Ans. I do. I mean to say that the balls of the character of these exhibits occur to me at once, but that the names or brands on balls that we have manufactured are multitudinous, and could not be ascertained without great trouble, if at all.

43 Cross-int. 62. Are you able to swear positively that as long ago as 1859 you took pains to have the covers absolutely independent in making balls like Exhibits Cutler 2 and Double Cover No. 1?

Ans. I am, as to Exhibit Double Cover 1, absolutely positive, and have no question as to the same rule in Exhibit Cutler 2. I know, furthermore, that in putting on the outer covering of Exhibit Double Cover 1, the covers were stamped, or holes pricked with what was called a shoe-dink, and that the workmen always used a dull needle in sewing them, and that the stitch was taken from the under side outward. It could not possibly catch into the inner cover if it was well sewed.

Cross-int. 63. Were these methods taken for the purpose of ensuring the independence of the covers, or had they any special reference whatever to the fact that there were two covers?

Ans. The workmen were always instructed not to attach one cover to the other.

Cross-int. 64. So far as preserving the shape of the ball is concerned, does it make any difference in a ball like Exhibit Double Cover 1, whether the covers are independent or stitched together at some points?

Ans. I think it might make a little difference.

Cross-int. 65. Why?

Ans. For this reason: The outer cover being attached to the inner cover in one instance, and generally the outer cover of the strongest material, would have a tendency to stretch in one direction, taking the inner and softer cover in the same direction; that is to say, if they are attached together. If the covers were absolutely independent of

each other, the outer cover might shift its position when the inner cover would not.

Cross-int. 66. Then you were not strictly correct in saying that two independent covers in contact would have no more influence in preserving the shape of the ball than a single cover?

Ans. In answer to int. 17, I have qualified, or made a distinction between a ball of a single cover and a ball of two covers, in these words, (then speaking of a high grade of goods): "My opinion is, that there would be no perceptible difference between two covers in contact and a single cover of equal thickness to the two, in keeping a
44 ball in its true shape, but if any difference, it would be in favor of the double cover." Now, the ball enquired about, Exhibit Double Cover 1, is one of a low grade, or cheap quality of goods; and in this instance the stretch of the leather cover is never taken out before being put on to the ball.

Cross-int. 67. Referring to your answer to cross-int. 52, what grade of goods were you then speaking about?

Ans. We were then speaking of a "New England" ball covered with buckskin, but the answer given was general and would apply more particularly to first-class goods.

Cross-int. 68. Did you ever have a ball returned to you or complained of for getting out of shape by reason of the double covers not being independent?

Ans. We are not in the habit of having balls returned to us after use, and I do not remember of a single instance of such a case. (The question being reread, the witness says: Never, to my knowledge.)

Cross-int. 69. If you take a yarn ball and cover it with thin leather, does not the shrinking of the cover upon drying compact the ball and make it livelier than a looser cover would do?

Ans. The shrinking of the leather would be likely to contract a loosely-wound ball, but upon a ball as hard as our highest grade, I think the contraction of the interior would be hardly perceptible. Continual batting would contract almost any ball. I am inclined to think it would make it somewhat livelier; in fact, I have no doubt of it.

Cross-int. 70. If upon such a ball you put, after the first cover had dried, a second cover of thin leather and let it shrink by drying, do you not think that this would still further contract the ball within, and tend to make it livelier still, supposing the yarn not to be wound so tightly as to admit of no further compression?

Ans. Assuming the first or inner cover to be perfectly dry, I don't think there would be a perceptible shrinkage, but of that I am not positive.

Cross-int. 71. If there was a perceptible shrinkage, would not it tend to make the ball livelier?

Ans. The tendency would be in that direction.

Noon recess.

45 Cross-int. 72. Have you ever actually tried a double-cover ball constructed exactly as specified and shown in the Mahn reissue, except that it had not the peculiar stitch there indicated?

Ans. I will say that I have not. In fact I will say that I do not recollect of trying, or attempting to play myself, with any kind of ball for the last twenty years.

Cross-int. 73. Have you ever carefully examined such a ball, either before or after it was played with?

Ans. I have only seen and handled them as I see and handle a ball now in my hands; and have heard them spoken of by our customers.

(The latter part of the answer objected to as not evidence.)

Cross-int. 74. Have you ever made a ball of yarn, tightly wrapped, in which there was no rubber or other centre?

Ans. We have.

Cross-Int. 75. Have you ever made such a ball with two covers in contact?

Ans. I doubt if we have, but we may have.

Cross-int. 76. Referring to your answer to cross-int. 62, was not the method of preparing the covers therein described used, whether one cover or two were to be put on the ball?

Ans. The method described was used on the outer cover only, in all that class of balls, whether one or two covers were used.

Cross int. 77. When the "New England" game was abandoned for the "National" game, did not the requirements of the ball used in playing undergo a very great change in the following particulars, viz: tightness or hardness of wrapping, liveliness, and capacity to resist hard usage; and would not such balls as Exhibits New England Balls 1 and 4, and Exhibit Cutler 2, be practically useless in playing the present game?

Ans. They did undergo a radical change in all the particulars named. They would be entirely useless for playing the present game, what is known as the "National" game.

Cross-int. 78. Do you believe the brand or stamp on the balls, Exhibits A and B, to be genuine; and is it one used by you on such balls?

Ans. It was put on at our place, and is one of our brands, and used on that kind of ball.

46 Direct examination resumed.

Int. 79. Please give your reasons for saying that the New England ball would be entirely useless in playing the National game in answer to cross-int. 77.

Ans. Because the rules of the National game require a totally different ball. That's the principal reason. I want to say that their method of playing the game is different, and such a ball as the old New England ball would not be tolerated.

Int. 80. Please refer to your 71st cross-int., and state the practical effect, if any, of that tendency, and what contrary effect the addition of a second cover would have, if any.

Ans. I assume there might be, possibly, a slight compression of the ball; then, I take it for granted that every one knows that a tightly wound ball is more elastic than a loosely wound one, the same as a wound ball of yarn is more elastic than a loose skein of yarn. The shrinkage of the cover would have a tendency to harden the ball, but the additional quantity of leather contained in two covers, instead of one, would more than counterbalance the increased hardness or elasticity, by deadening the ball, in the proportion as leather is more dead or less elastic than yarn.

Int. 81. Please read your 25th int. and ans., and state what enquiries you have made, if any, in regard to the manufacture of balls like Exhibit 56 by your firm, and state as near as you now can what the facts are about the manufacture, by your firm, of balls with two covers in contact, each cover of the figure 8 two-piece pattern, like Exhibit 56, during the past four or five years.

(Objected to, as calling for hearsay evidence.)

Ans. I find myself mistaken in saying that the ball, Exhibit 56, was taken from our stock of regular goods; but, on the contrary, it was made for this particular exhibition. But, as near as I am able to state, we have made but very few, if any, balls like Exhibit 56, I will say for the past four or five years. I intended to say, in the beginning of my examination, that I attend but very little at the present time to the details of our business, and that is my apology now for such an error.

47 Cross-examination resumed:

Cross-int. 82. If two balls were made of yarn, exactly alike, one covered with two thin independent leather covers shrunk on as stated in cross-int. 70, the other covered with a single leather cover as thick as the two, would not the former have its yarn compressed more tightly, and be more lively than the latter?

Ans. The shrinkage, in my opinion, of the single leather cover would be quite as great as that of the two thinner covers; then, if my premises are correct, the two-cover ball would not be the liveliest.

HARRISON HARWOOD.

Attest:

CHAS. F. SLEEPER,
Special Examiner.

Deposition of Harrison Harwood, jr.

BOSTON, *April* 24, 1878.

Direct examination by JAMES E. MAYNADIER, Esq., of counsel for defendants.

Int. 1. What is your name, age, residence, and occupation?

Ans. Harrison Harwood, jr.; 35; Natick, Mass.; manufacturer of base balls; one of the firm of H. Harwood & Sons.

Int. 2. How long have you been engaged in the manufacture of base balls?

Ans. Since 1859.

Int. 3. Please produce sample balls representing fairly all the kinds of balls manufactured by your firm since April 11, 1876, with a single cover formed of two pieces of leather secured to each other by a single seam.

Ans. I now produce exhibits numbered from 60 to 65, inclusive, also Exhibit No. 68.

Int. 4. Now please cut through the cover of each of those exhibits sufficient to show whether there be one or two covers, and state how you find the fact to be on inspection.

Ans. I find each of them with one leather cover.

48 Int. 5. Now please cut Exhibit 56 in the same manner, and state how many covers it has, and what pattern each cover is.

Ans. I find two leather covers applied to the ball independent of each other, each cover figure 8 pattern.

Int. 6. How many balls with two covers independent of each other, in contact, and each in two pieces, have your firm manufactured since April 11, '76? And how many have you sold, as near as you can find out?

Ans. We have manufactured the samples for this case only, and have not sold any to my knowledge.

Int. 7. What trade demand has there been during the past six or

seven years for balls with two covers in contact with but independent of each other? And how many such balls have you manufactured and sold during that time, that is to say, since the year 1870?

Ans. We have not had any orders for those goods, and I doubt if we have sold any since 1872; possibly a few since 1870.

Int. 8. Now produce sample balls representing fairly all the kinds of balls manufactured by your firm since April 11, 1876, by building up a small ball and then re-covering it; the cover of the small ball, and also of the compound ball, being of two pieces of leather joined together by a single seam.

Ans. I produce Exhibit 57. This is a fair sample of all such balls that I remember of at the present time.

Int. 9. Please cut that ball as you did the others, and see how many covers it has, and what the pattern is.

Ans. I find two covers applied to the ball independently of each other of the figure 8 pattern.

Int. 10. Have your firm manufactured any other compound ball with either of the covers differing from those of Exhibit 57, since April 11, 1876, in the regular course of business? If so, produce samples of all those balls.

Ans. We have; and I produce Exhibit 58.

Int. 11. Please cut that ball as you did the others, and state how many covers you find, and of what patterns.

Ans. I find two covers; the outer cover is the figure 8 pattern, and the inner cover is a four-piece pattern. The outer cover consists of two pieces of leather joined together by a single seam and applied to the ball independent from the inner cover.

49 Int. 12. When did you first know of balls with two covers applied to the ball independent of each other, with the seams of the covers breaking joints and the covers in contact, and by whom were such balls manufactured and sold, and to what extent? And produce, if you can, a sample of such balls.

Ans. I knew of such balls as early as 1859. They were manufactured at that time by H. Harwood to quite an extent for a few years from that date, at Natick, and by other parties. I produce Exhibit Double Cover 1 as a fair sample representing those balls.

Int. 13. Is Exhibit Double Cover 1 a sample of those made by H. Harwood or by other parties?

Ans. A sample made by H. Harwood.

Int. 14. Now produce samples of any other balls with two covers, each cover applied to the ball independently of and in contact with the other, known to you before the year 1870. State where, and by whom, and to what extent such balls were manufactured and sold before that time.

Ans. I produce Exhibit Cutler 2, which was manufactured to a considerable extent by H. Harwood and by H. Harwood & Sons. We have also manufactured a ball, four-piece inner cover, and two-piece outer cover. There was also made by other parties similar balls, at Natick; by Mr. Cutler and Mr. Beals. That's all I think of now.

Int. 15. When did you first have knowledge of base-balls with a cover formed of two pieces of leather secured together by a single seam? Where, and by whom were such balls manufactured and sold, and to what extent? And produce samples of such balls.

Ans. I knew of such balls previous to 1862; they were manufactured by H. Harwood & Sons in 1862 to some extent, and were made by other

parties at that time and earlier. I produce Exhibits Cutler 2 and New England Ball 4.

Int. 16. When did your firm commence to use this two-piece figure 8 pattern largely, and to what extent have you used it from that time to the present?

Ans. We have used it almost exclusively since 1867, and previous to that date in some styles.

Int. 17. When did you first know of balls made by building
50 up a complete ball with a leather cover to a larger size and then recovering it? Where, and by whom were such balls manufactured? To what extent? And produce samples.

Ans. I think I must have known, during the first few years of our manufacture, and should say that we manufactured, say several barrels annually from 1865, or thereabouts, to 1870. Some of these balls had a four-piece pattern inside, and some a two-piece pattern. A large portion had a two-piece pattern outside. A sample of one of the kinds described I now produce, marked Exhibit Double Ball 1. I have known of balls manufactured like Exhibit New England Ball 1, as early as 1860 or '61, manufactured by H. Harwood and by other parties; and also Exhibit New England Ball 3 (now put in evidence, and marked Exhibit New England Ball 3, C. F. S., sp'l ex'r), as early as 1862, or thereabouts. These balls were manufactured to a considerable extent at that time, at Natick, by H. Harwood, Mr. Cutler, and Mr. Beals. These parties made balls of similar construction to these exhibits.

Adjourned.

BOSTON, *April* 30, 1878.

Int. 18. Please describe fully the different styles of balls which were manufactured and sold by your firm, prior to the year 1870, with two covers in contact, or what I have called a compound ball, referring to the exhibits, if you think fit.

Ans. The goods that we manufactured in the early part of our business were made with two covers applied to the ball independent of each other. Each cover was made of four pieces of leather. We used calfskin and buckskin for the outer coverings. We made a good many thousand dozens constructed similar to Exhibit Double Cover 1, as far as the covers were concerned. The filling of the balls were mostly like this exhibit. Others were composed of flocks, and some with yarn principally. We made balls like Exhibit Cutler 2 in 1862, but not in large quantities. These latter goods were for the club trade mostly. We made in the year 1861, I should say, goods like Exhibit New England Ball 1. We have also made balls constructed, as far as the covers
51 are concerned, like Exhibit Double Ball 1, and some that had a four-piece inner pattern, and a two-piece outer pattern. These goods were made between the years '65 and '70.

Int. 19. Please describe the different patterns of covers used by your firm prior to 1870. And state, also, what other patterns, if any, you have used since that time, and what patternn has been most generally used throughout the trade.

Ans. The first pattern that we used was a four-piece pattern, the same as Exhibit Double Cover 1. The next pattern was the same as the one applied to Cutler 2, and at the same time, or thereabouts, we used a pattern like Exhibit Metal Pattern 1. We were using all three of these patterns, I should say, in the year 1862; after that, or later, we used a pattern like Exhibit Metal Pattern 2. We have used other pat-

terns, but not very generally. We have made a few balls with a pattern like Exhibit Double Cover 1, only the cover was in six pieces instead of four. I don't remember of using any new patterns since 1870. The pattern in general use in 1860 was the four-piece pattern; and since 1868, the two-piece figure 8 pattern has been used almost exclusively by all manufacturers of balls.

Int. 20. What is the value of the two-piece pattern described in the Mahn reissue, in your opinion, each piece a hemisphere? State your reasons fully.

(Objected to as leading.)

Ans. From my knowledge as a manufacturer I should say that it has no value. It is not an economical pattern, on account of wasting stock in cutting the same. It is not a beautiful pattern to the eye. It has a tendency, when applied to a ball in manufacturing, to flatten and get the ball out of shape. Second, there is a great strain upon the centre of each hemisphere where there is the least amount of leather to stretch, being made out of a flat piece. In playing with a ball of this construction, the leather in the centre of each hemisphere will pull so hard that it will flatten the ball, as there will be a plenty of room for the ball to expand on the line of the seam, after hard batting. Another objection: The cover, when applied, stands partially edgewise, and not laid flat, as in other styles of covers. This raises the seam on leather of the ordinary thickness, and would make it very hard on the player's hands, so much so that it would not have any value.

52 Int. 21. Please produce samples of balls with the two-piece hemispherical covers, and state what reasons you have for believing that they were made by L. H. Mahn.

Ans. I produce a ball. (Now put in evidence and marked Exhibit H. Cover 1, C. F. S., sp'l ex'r.) My reasons for believing this to be his make are, first, that it has his name stamped upon it; and, second, I do not know of any other party that manufactures any balls with this style of cover.

Int. 22. Has that ball (Exhibit H. Cover 1) two covers, or only one. And is the stitch the double herring-bone lock-stitch, or the common stitch?

Ans. I should say from appearance, and am quite positive, that it has but one cover. The stitch is not a lock-stitch, but a common or usual stitch.

Int. 23. When did you first know of L. H. Mahn as a manufacturer of balls? And when were goods of his make first put on the market? And in this connection, state what your books show as to balls ordered by him, and work done to his order.

Ans. I first knew of his manufacturing balls in the fall of 1871, in the smallest way possible. The first goods on the market of his manufacture to any extent was in 1872. Our books show that in 1870 $2,256.00 in value were sold to C. W. Jenks & Bro., and ordered by L. H. Mahn. The first order was March 5th, the last August 29. The value of the goods ordered after June 15th, when the season practically ends, was $196.24. The value of the goods sold and ordered by the same parties and delivered during the year 1871, from Feb. 22d to June 14, was $3,631.37. On May 5th, 1871, Mr. Mahn sent to us twenty-three old balls to be recovered; on May 5th, or thereabouts, they were returned to him; on May 5th, we charged him 35 cents a piece for recovering these balls.

Cross-examination by PATRICK J. FLATLEY, Esq., of counsel for complainant:

Cross-int. 24. When was the firm of H. Harwood & Sons established, and what were your duties as a member of such firm?

Ans. I think about the year 1862; it might have been one year
53 earlier than that, or one year later. I have had charge of the manufacturing.

Cross-int. 25. Since that time have your duties been uniformly of the same kind, or have they been modified; and if so, in what manner?

Ans. I have had charge of the manufacturing from that time to this, but have not devoted so much of my time to the details of the business for the last few years as formerly. I do not think of any radical changes or modifications, at this moment.

Cross-int. 26. Who had control of the books of the firm; and who solicited orders, if any were solicited; and if not, who received such orders?

Ans. I do not know of any particular member of the firm having control of the books. Some of the orders were solicited by H. Harwood in the early part of our business, and latterly by H. G. Harwood. A large portion, however, have been received by mail. The letters with orders were opened by all the members of the firm, years ago, in the first part of our business; lately, by H. G. Harwood and myself principally, and I might say almost exclusively.

Cross-int. 27. Have you examined the ball in this case, which the complainant claims is an infringement of his patent? If so, please state in what quantities such balls have been manufactured by you.

Ans. Do you refer to Exhibits A and B?

Cross-int. 28. Yes, sir.

Ans. I have examined the same, but I am unable to tell the quantities we manufactured, at this time.

Cross-int. 29. Are you still engaged in the manufacture of such balls; and have you been for the past five years?

Ans. I should say that we are manufacturing a very few. I don't think that we have been manufacturing that grade of goods for the past five years all the time.

Cross-int. 30. When did you relinquish, and when did you resume the manufacture and sale of that grade of goods? Please answer this with as much precision as posible.

Ans. I no not remember the time that we relinquished manufacturing goods of that style, or similar style. I think we made goods in that grade and style during the season of 1877.

54 Cross-int. 31. Do your books contain an accurate account of the goods manufactured and sold during the time alleged in int. 29?

Ans. Our ledger shows very near the account in value of sales, but am unable to say at this moment whether we have books showing the interior construction of goods manufactured during the past five years.

Noon recess.

Cross-int. 32. What qualities, in your opinion, are required to constitute the cover of a base ball perfect?

Ans. I should say, first, strength of the leather; second, properly applied; third, a desirable or proper pattern.

Cross-int. 33. Is it not true, then, that the nearer to perfection the cover is, the more valuable it is?

Ans. I should say so, unless the pattern by which it is cut should be very wasteful.

Cross-int. 34. Can you give any rule by which the degree of wastefulness can be measured in the construction of such covers?

Ans. I could not, unless I had the patterns before me.

Cross-int. 35. If you did have the patterns before you, what would be the basis of calculation of such wastefulness?

Ans. Supposing the leather to be perfect, it would be the amount of leather that could not be applied to a ball.

Cross-int. 36. Other things being equal, is it not true that there is more waste in balls of a smaller size than in balls of a larger size?

Ans. I doubt if it would vary much either way. I have not tested it for that purpose, to my remembrance.

Cross-int. 37. Will you please state at length, how you ascertain this result?

Ans. I base my opinion that the result would not differ materially, from the amount of waste leather found at the chopping blocks.

Cross-int. 38. Is there any particular occasion that you recall when you made this estimate from such a result? And if so, state what quantity of the larger, and what quantity of the smaller balls had been manufactured, and then what consumption of leather had taken place in the manfacture of either kind.

55 Ans. There's no particular occasion. As I stated before that I had not tested this matter. I have been in the habit of watching the amount of waste at the chopping blocks, and have not noticed any material difference.

Adjourned.

BOSTON, *May* 2, 1878.

Cross-int. 39. Referring to your answer to question No. 20, please state whether the views there expressed are based upon experience which you yourself have had of the "Mahn" ball in actual use.

Ans. From my knowledge as a manufacturer, in part; also, as a player. I have tested one ball only of that make, hemispherical cover.

Cross-int. 40. Did you yourself play with the ball of which you speak?

Ans. I did.

Cross-int. 41. What are flocks?

Ans. The flocks that we used was some kind of waste from carpet factories, long staple.

Cross-int. 42. How do you make this into a ball?

Ans. It was wadded, or rolled up to a small size, and layers applied until it was a full size. The twine or yarn were used with this to hold it in place; then covered. Those had probably two covers at that time.

Cross-int. 43. The balls which you referred to in answer to int. 18, as "some with yarn principally" were those like Exhibit Cutler 2?

Ans. No. I referred to other balls, like Exhibit Double Cover 1.

Cross-int. 44. What else besides yarn was used in them?

Ans. Rubber.

Cross-int. 45. Nothing else?

Ans. Nothing else that I think of now. When I speak of "yarn principally," rubber and yarn. It was scrap rubber, wound into the form of a small ball.

56 Redirect examination:

Int. 46. Have you devoted your whole time to the manufacture of balls since '59? If not, what other business have you had?

Ans. I have not. For the past six years I have been a director in the Natick National Bank; also, one of the board of investment of the Natick Five Cents Savings Bank, and have devoted one hour a day or more to the interests of those institutions. I have had private matters to attend to, which has also used considerable of my time.

Recross examination:

Cross-int. 47. Is the evidence you have given respecting the kinds of balls made by you before 1870 the result of your own unaided recollection?

Ans. Yes, sir. I have talked with the other members of the firm about the balls made in former years, but recollect distinctly the goods testified to as having made.

H. HARWOOD, JR.

Attest: CHARLES F. SLEEPER,
Special Examiner.

Deposition of Horace Mann.

BOSTON *May* 2, 1878.

Direct examination by JAMES E. MAYNADIER, Esq., of counsel for defendants:

Int. 1. What is your name, age, residence, and occupation?

Ans. Horace Mann; 43; Natick, Mass.; lather by trade. I have followed other occupations.

Int. 2. Did you ever belong to any base-ball club? If so, when first, and to what club?

Ans. Yes, sir; I have. In 1858 I was a member of the Eliot Base-Ball Club, of Natick. In 1859 I was a member of the Takawampbait Club, of Natick. In '66, '67, and '68, I was a member of
57 the Eagle Base-Ball Club, of Natick. These are all the organizations of that character that I have belonged to, except that in '60 the name of the Takawampbait was changed to Yankee.

Int. 3. What game did those clubs play? And what post did you fill?

Ans. The Eliot Club, Takawampbait, and the Yankee Club played what is termed the "New England" or "Massachusetts" game. The Eagle Club played what was termed, at that time, the "New York" or "National" game. In the New England game I played respectively as catcher and second catcher. In the New York game I played as pitcher.

Int. 4. When did you last belong to a base-ball club?

Ans. In the year '68.

Int. 5. Please describe the balls usually used by the clubs you belonged to, and those clubs with whom they played in the New England game, and produce, if you can, samples of such balls.

Ans. We were bound by a certain regulation to play with a ball made of yarn covered with leather, not falling below 5½ inches in circumference or exceeding 8½ inches. The balls generally used were formed with a core of lead or other heavy material, placed in a buckskin bag, wound loosely with yarn, then covered, then wound again with yarn, then covered again; making the ball within the prescription of the

regulations. One ball I produce answering the description. (Now put in evidence marked Exhibit Eliott, C. F. S., sp'l ex'r.) Balls of this description usually had a cover of four pieces. In the beginning of the game, after a short time, covers of the pattern marked Exhibit Cutler 2 were adopted. The ball is constructed substantially as before described.

Int. 6. Did you ever make any balls for either of the clubs to which you belonged, or for anybody else? If so, please describe all such balls briefly, and if any of them had two covers in contact or not, describe those fully.

Ans. I have made balls for the clubs that I played with, constructed with a core of lead or other heavy material, inclosed in a buckskin sack or bag wound with yarn or other material, and covered, then wound with yarn, then covered again. These balls were mostly covered
58 with what is termed a four-piece pattern like Exhibit Eliott. I have also constructed balls like those just described, using for an outside cover, a pattern in two pieces like that on Exhibit Cutler 2. The balls described above were usually covered with buckskin.

Int. 7. Please state where you obtained Exhibit Eliott; from whom, and what led you to get it.

Ans. I obtained that ball, Exhibit Eliott, in Milford, Massachusetts, from Mr. Winthrop H. Ring, of said Milford. I visited his house and he informed me that he had manufactured balls of the regulation pattern for the Massachusetts game, and I purchased it from him.

(Objection to so much of the answer as follows from the word "informed" to the word "game," by counsel for complainant.)

Int. 8. Look at the ball (now put in evidence and marked Defendants' Exhibit Ring, C. F. S., sp'l ex'r), and state where you got that ball, if you got it, from whom, and what led you to get it.

Ans. I got that ball of Mr. James Nelson, of Upton, Massachusetts, and I was led to obtain it by information gained from Mr. Winthrop H. Ring, of Milford, Massachusetts.

(Objected to by complainant's counsel, because James Nelson is not mentioned in the answer.)

Int. 9. When did you first have knowledge of base-balls with two covers, the covers in contact but independent of each other, with the seams breaking joints? And produce samples of such balls.

Ans. I think, to the best of my recollection, in 1859. I produce Exhibit Cutler 2 as a sample of such balls.

Int. 10. What pattern for covers did you use on the balls made by you, with two covers, prior to 1868?

Ans. A portion of the time I used the cover in four pieces like the patterns on Exhibits Ring and Eliott. Later, I used the pattern in two pieces like the one upon Exhibit Cutler 2. These were all the patterns I used upon balls of my own construction prior to 1868.

Int. 11. During what time were balls with two covers manufactured and used to your knowledge, prior to 1869, and who manufactured them to your knowledge before that year?

Ans. I think that in 1858 a few balls with two covers were
59 made and used in playing the New England or Massachusetts game, and, aside from those made by myself I have known of other parties making them. Among those parties are Mr. William A. Cutler, Mr. George W. Beals, W. Gates Clark, Mr. Harrison Harwood and Sons, all of Natick, Massachusetts. I think that this manufacture, as far I recollect, extended from the year 1858 to 1864.

Int. 12. When did you first know a base-ball cover in two pieces of

leather secured to each other by a single seam? What was the pattern, and who first cut this pattern, so far as you know?

Ans. I first knew of a cover of leather in two pieces with a single seam in the year 1859. The pattern was of the shape of that upon Exhibit Cutler 2. The first party I recollect of showing and using the pattern was Mr. William A. Cutler, of Natick, Massachusetts.

Int. 13. Have you an old metal pattern of this two-piece cover with you? If so, please produce it, to be marked as an exhibit in the case, and state where and from whom you got it.

Ans. I produce the pattern. I obtained it of Mr. John Golding, of Natick, Massachusetts.

(The pattern is now put in evidence, and marked Exhibit Metal Pattern 3, C. F. S., sp'l ex'r.)

Int. 14. Look at the copy of the specification and drawings now shown you, marked Exhibit Osgood patent, and state whether you understand the construction and operation of the thing therein described, and state what, if anything, is described therein which was not known to you before the year 1869.

Ans. I think there is described in this patent or this claim a double herring-bone stitch. With this I am not familiar. There is also described a ball or sphere covered with two pieces of leather compressed in hemispherical shape after being molded with plunges. I was not acquainted with this description of cover for balls prior to 1869. This stitch and cover in two hemispherical pieces is about all that I see in this claim that is new to me.

Adjourned.

60 BOSTON, *May* 3, 1878.

Cross-examination by JOSEPH C. FRALEY, Esq., of counsel for complainant:

Cross-int. 15. How long since you have made a base-ball?

Ans. I've not made one since 1860 of my own manufacture. I have been employed in the manufacture of portions of them since that time, in 1863, and not any since.

Cross-int. 16. How long since you have played the game of base-ball?

Ans. Not in any regular matches since 1868.

Cross-int. 17. Was it not the feature of the New England game, of which you have spoken, that the ball was thrown at the player with the intention of striking him?

Ans. In some cases the ball was thrown at the player, but it was not an especial feature of the game.

Cross-int. 18. When you were told yesterday to state whether you understand the construction and operation of the thing described in Exhibit Osgood Patent, had you ever, before that time, examined said patent?

Ans. I had, sir.

Cross-int. 19. Look at it again, and state whether you are sure it was that, and not the reissued patent, that you had previously seen.

Ans. I had seen it before.

Cross-int. 20. When you stated that the peculiar stitch, and the cover in two hemispherical pieces, was about all that you saw in the claim that was new to you, it was because you were familiar with balls like Exhibits Cutler 2, Eliott, and Ring?

Ans. Yes, sir; it was because I was familiar with them; that is, in

relation to the shape of the patterns used in their coverings, and not with the particular construction of those balls. I believe I testified yesterday in relation to the patterns, and not to the peculiar construction of those three balls.

Cross-int. 21. So far as relates to the double covering, your familiarity with it was based upon your knowledge of balls such as you have described in your answers to ints. 5, 6, and 11?

61 Ans. Yes, sir.

Cross-int. 22. These balls looked and felt substantially like Exhibits Cutler 2, Eliot, and Ring, did they not?

Ans. Yes, sir; they did.

Cross-int. 23. What led you to go to Messrs. Ring, Nelson, and Golding for the various exhibits which you say you got from them?

Ans. I was in pursuit of facts in relation to this case, and from information obtained from other parties supposed I might be able to obtain some knowledge from the various parties named.

Cross-int. 24. You were employed, were you not, by these defendants to hunt up evidence for this case?

Ans. Yes, sir; I was.

Cross-int. 25. Are you able, after this length of time, to swear that you positively recollect any one particular ball in the year 1858, made by either Mr. Cutler, Mr. Beals, Mr. Clark, or Messrs. Harrison Harwood & Sons?

Ans. I can swear to one ball that I know Mr. Wm. A. Cutler made in 1858. I don't think I could swear to any particular ball made by either of the other parties named.

Cross-int. 26. Were you present when Mr. Cutler made that ball?

Ans. No, sir; I was not.

Cross-int. 27. How, then, do you know what was its interior construction?

Ans. At that time Mr. Cutler was making balls for the use of our club, and he was also the thrower in the game, myself the catcher; and we were in consultation daily about improvements in the construction of these balls, and from the information which he imparted to me I think I can safely swear to the construction of this ball.

Cross-int. 28. Is this information the only ground for your belief?

Ans. I had the handling of the ball probably a thousand times, and we were laboring to produce a particular result.

Cross-int. 29. This, then, is all that leads you to remember that the ball had on it two independent covers of buckskin?

Ans. Yes, sir; I think it is.

62 Cross-int. 30. Could you, by handling a ball, tell anything about this fact?

Ans. Yes, sir; I could.

Cross-int. 31. Could you unless the covers were directly in contact?

Ans. Yes, sir; I think I could.

Cross-int. 32. Could you tell whether they were independent or stitched together?

Ans. Not without examination.

Cross-int. 33. Other examination than handling, you mean?

Ans. I think it would require other examination.

Cross-int. 34. Are you able to swear that you made such other examination of that particular ball?

Ans. No, sir; I am not.

Cross-int. 35. Do you think you, or any one else, could, by handling the balls put in evidence in this case from Exhibits 57 to 68, inclusive,

tell whether they had one or two covers, supposing they were not cut open?

Ans. We have been speaking of the New England ball in my testimony, and now you are talking of something of a different kind.

Cross-int. 36. Are you able to swear that you recollect any one particular ball, other than that referred to in your answer to question 24, made by any of the parties named, in the year 1859?

Ans. No; I do not think that I could swear to any ball that I could specify particularly in that year.

Cross-int. 37. How about 1860?

Ans. I don't recollect any ball that I could swear to in that year. I could swear generally.

Cross-int. 38. How about each of the several years, from 1860 to 1870?

Ans. I can swear generally that I have been acquainted with the manufacture of balls of that description.

Cross-int. 39. (Question repeated.)

Ans. I do not know that I can alter that materially.

Cross-int. 40. How many balls did you yourself make in 1858 with two covers?

Ans. Do you mean the exact number?

63 Cross-int. 41. I do.

Ans. I cannot tell the exact number.

Cross-int. 42. Can you swear that you made any with the covers in contact in that year?

Ans. I can, sir.

Cross-int. 43. How many?

Ans. I cannot specify the number.

Cross-int. 44. Was it more than ten?

Ans. It might have exceeded that number or fallen below it. I know I made some of that description.

Cross-int. 45. In your opinion as a ball maker, would two covers on the outside, like Exhibit Cutler 2, keep the lead centre of that ball from shifting?

Ans. Not invariably.

Cross-int. 46. Do you mean that it would have more or less effect in keeping the lead centre in place, than where the inner cover was some distance in, like Exhibit New England Ball 3?

Ans. This might depend upon other conditions entering into the construction of balls of this character.

Cross-int. 47. Supposing the wrapping was of the same yarn, and wrapped with the same looseness, and the lead of the same size and weight, and the covers of the same shape and quality of leather, which of the two balls would succeed in keeping its lead centre in place better, the one with the covers in contact, or the one with the inner cover some distance in?

Ans. I should say that a ball constructed with the inner cover near the centre, and with two covers upon the outside independent of each other, would be superior and preferable to either of the balls named. As to the two balls spoken of, I should prefer the ball with the inner cover some distance in.

Cross-int. 48. When you put the two covers on the outside yourself, didn't you put a third one on the inside some distance in, like the one you have just described?

Ans. I have made them in that manner.

64 Direct examination resumed:

Int. 49. Please state when you made the balls referred to in int. 48; how many you made of that kind, as near as you can now state, and what was the pattern of each of the three covers.

Ans. I made some of those balls in 1859; perhaps ten, or more. Sometimes I used for the inner cover (meaning near the centre), the four-piece pattern. The two outside covers of the two-piece, or figure 8 pattern; and have also made them with the four-piece pattern, in the same manner.

Int. 50. You gave the dimensions of the circumference of the regulation ball in your answer to int. 5. That answer differs from your affidavit in this case, and also from rule 1, contained in the Base-ball Players' Pocket Companion, bearing the following imprint: "Boston: Mayhew & Baker, 208 Washington Street, 1860," now shown you. Please reconsider your 5th answer and make any correction you may desire. (The book referred to is now put in evidence, and marked Exhibit Book, C. F. S., sp'l ex'r.)

(Exhibit Book objected to as not noticed in the answer, and the question therefore objected to.)

Ans. I have said in this answer we were bound by a certain regulation to play with a ball made of yarn, covered with leather, not falling below 5½ inches in circumference, or exceeding 8½ inches. I will alter the words and figures 5½ inches to 6½ inches.

Int. 51. Please describe in detail the construction of the ball referred to in your 24th answer, stating the number of covers used, and the pattern or patterns.

Ans. I think this ball—I am positive of it—was made with a core of lead, cut in strips and wound with yarn into a small ball, forming a core or centre. This was then placed in a small cover of the four-piece pattern. It was then wound loosely with yarn, then covered again, the cover in four pieces; then covered again, making a ball of the required size of the regulation. The outside cover was formed of four pieces.

Int. 52. State whether your description of this ball is based upon what Mr. Cutler told you at the time, or upon your own dissection of the ball.

65 Ans. I had evidence of the formation of the outside cover by observation. The other parts of the construction I gained knowledge of from Mr. Cutler.

Int. 53. Have you ever tested a ball with the cover made of two hemispherical pieces of leather like Exhibit H Cover 1?

Ans. I have tested a ball within a few days of this make, by handling, batting, and throwing the same upon the ground and catching it.

Int. 54. What is the practical value, if any, in your opinion, of the two-piece hemispherical cover?

Ans. I do not think it is of any practical value, as far as I am acquainted with it.

Cross-examination resumed:

Cross-int. 55. Are you able to swear that Mr. Cutler, in 1858, told you that that particular ball of which you have been testifying had a four-piece inner cover?

Ans. Yes, sir; I think I can swear to that.

Cross-int. 56. At what time of the year did you have the conversation, and whereabouts?

Ans. I think it was in the summer of 1858, in Natick, at Mr. Sumner Golding's farm, where Mr. Cutler was then residing.

Cross-int. 57. Was this fact of the inner cover so remarkably important as to make a special impression of the fact upon your mind at the time?

Ans. Yes, sir; it was.

Cross-int. 58. Is this also true in regard to its being in four pieces?

Ans. I think it is, sir.

Cross-int. 59. Haven't you been talking lately with Mr. Cutler or with other parties, a good deal about this ball?

Ans. Do you mean this particular ball? No, sir.

Cross-int. 60. Have you thought about that particular ball during the interval between 1858 and the time since, when you have been lately engaged for this case?

Ans. I cannot say. I don't remember.

66 Cross-int. 61. Do you consider yourself a person skilled in the art of manufacturing base balls, as is now carried on?

Ans. No, sir; I do not.

Cross-int. 62. Were you in 1876?

Ans. No, sir.

Cross-int. 63. Were you in '72?

Ans. No, sir.

Cross-int. 64. Would you like to be hit in the head with Exhibit H Cover 1?

Ans. Under ordinary considerations I should decline.

HORACE MANN.

Attest:

CHAS. F. SLEEPER,
Special Examiner.

Deposition of William A. Cutler.

BOSTON, *May* 3, 1878.

Direct examination by JAMES E. MAYNADIER, Esq., of counsel for defendants:

Int. 1. What is your name, age, residence, and occupation?

Ans. William A. Cutler; 43; Natick, Mass.; bootmaker.

Int. 2. Did you ever belong to any base-ball club? If so, when? And give the names of all you belonged to.

Ans. Yes. The first one I belonged to was the Eliot, in 1858. In 1859 and '60 I belonged to the Yankee Base-Ball Club. These two played the New England game. In 1866 and '7 I belonged to the National Club, of Raleigh, N. C., and played the National game.

Int. 3. Were you ever in the Army? If so, when; in what capacity first, and how long; and in what different capacities?

Ans. Yes. I entered the Army in 1861, and was mustered out of the service January 1st, 1868. I entered the Army as a private, and was mustered out major and brevet colonel. I was corporal, sergeant, first sergeant, captain, and major, and breveted three times.

67 Int. 4. Did you ever make balls? If so, during what time?

Ans. Yes, I made balls. The first I ever made for a regular organized club was in 1858. '58, '9, and '60 I made them, three seasons.

Int. 5. Please describe the way you made them usually, in 1858?

Ans. The first balls I made in 1858 were this pattern (Exhibit Ring), four-piece pattern. The centre of the ball was a leaden bullet, with yarn wound on to make it a proper size. The next I tried for the centre was common shot confined in a leather cover, sewed tight, and yarn

wound on to that the proper size, and then covered with a four-piece cover. These two ways of loading not proving satisfactory, I went to a man by the name of Slocum, who made the balls for the Winthrop Club, of Holliston (this was an older organization), and asked him to explain to me how he made the balls for the club, and he told me (and this was the practice I followed afterwards, or nearly so), that he used sheet lead, rolled thin and cut into strips as narrow as could be done with a sharp knife. These strips of lead were wound with yarn, to make a ball about 1½ inch in diameter, then quilted all over with a large needle and yarn or thread, then covered with soft leather; then more yarn wound on, sufficient to make it the proper size, then quilted again; and covered with buckskin before it was used.

Noon recess.

Having a great interest in the game of ball, I continued to experiment in the manufacture of balls through the whole season of '58; and, in fact, I never stopped experimenting while I made balls, during the three years. One of the chief defects of the ball of wound lead and yarn, covered with a four-piece cover, was its tendency to elongate in the direction of the points of the pieces, as shown in this Exhibit Ring. To overcome this was one of my chief objects in experimenting. Finally I cut this cover (Exhibit Cutler 2), which is original with me, and which is, as nearly as I can describe it, of a bi-ovate shape. This was cut in the early part of the ball season in 1859.

Int. 6. Did you ever make any balls with two covers in contact, each of the four-piece pattern? If so, please read the 24th to 26th
68 and the 51st interrogatories and answers of Horace Mann, and state whether the ball is correctly described by him, or not, in his 51st answer.

Ans. Fifteen or twenty years after, it is pretty hard to remember any particular ball. It is possible that I might have made a few for experiment, but the only ball that we considered a first-class ball was covered with a two-piece cover with the covers in contact. (Witness, having read the questions and answers referred to, says:) All I can say to that is, that would be the regular way of making the ball, as he describes, but I don't remember that particular ball.

Int. 7. Now, please describe more fully the balls referred to by you in your last answer, as "covered with a two-piece cover with the two covers in contact," and produce a sample of such ball.

Ans. Well, it was made with wound lead and yarn as previously described. When it was the proper size one cover was put on, making a complete ball, then a second, or outer cover was put on, the pieces turned so as to cross each other. These covers were entirely independent of each other. Here's two: (Exhibits Cutler 1 and Cutler 2, in answer to the request.)

Int. 8. Look at the metal pattern now shown you (marked Exhibit Metal Pattern 3) and state what difference, if any, there is between that pattern and the metal patterns used by you in '59 and '60. And state, also, whether that pattern is a pattern for the inner or outer two-piece cover.

Ans. This pattern is just like the one I used, and I have every reason to believe that it's one of my old patterns that I used at that time. It's an inside-cover pattern.

Int. 9. State what reason you have to believe it is one of your old patterns.

Ans. From this fact: Because I believe it to have been found in my mother's house by my half-brother, John S. Golding, and I'm sure that no one else has ever lived there that made balls but myself.

Int. 10. What are the holes for around the edge of Exhibit Metal Pattern 3?

69 Ans. I used to lay the pattern on to the cover and prick those through with a fine pointed awl, to stitch by.

Int. 11. What pattern did you use for the cover of the yarn and lead core; and why did you use that pattern? I refer now to your first-class balls made in '59 and '60?

Ans. Four-piece. Being inside the ball with yarn over it, and that being quilted, it didn't affect the spherical shape of the ball any, and I could use up the small pieces of leather.

Int. 12. Did you know of balls made by Horace Mann and others before you went into the Army with covers of the two-piece figure 8 patterns? If so, did they have one cover or two, so far as you then knew or were informed. And give the names of all persons you now recollect, who made balls with two covers before you went into the Army.

Ans. I did. They were made both ways, both one cover or two covers. One man in particular, I know, made them right along with two covers. There is but one man besides myself that I am positive was using two covers. That was George Beals.

Cross-examination by JOSEPH C. FRALEY, Esq., of counsel for complainant.

Cross-int. 13. Do you mean to say, by your answer to int. 6, that you consider that the lead centre will be kept in place better by two covers on the outside of the ball, than where the inner cover is some distance in?

Ans. No; I don't mean to say any such thing. That don't indicate any such thing—that answer—at all.

Cross-int. 14. Then that answer has only reference to the two-piece cover as compared with the four-piece cover. Am I correct?

Ans. Certainly; only as compared with the four-piece cover.

Cross-int. 15. How long since you have made a base ball?

Ans. With the exception of these two (Exhibits Cutler 1 and Cutler 2), I haven't made a ball since 1860.

Cross-int. 16. The balls respecting which you have testified, were all substantially like these last two in size and feel?

Ans. Substantially; yes.

70 Direct examination resumed:

Int. 17. What is the filling in balls Exhibit Cutler 1 and Cutler 2?

Ans. Exhibit Cutler 1 is tea lead wound in with yarn, the core being between an inch or an inch and a half in diameter, covered, and yarn sufficient wound to make the ball its present size with the two covers. Exhibit Cutler 2, the core is common shot put into a leather cover and the yarn wound on to about half the present size. Then the yarn already on, quilted through all over, then more yarn wound on till it makes the ball the size it is now with the covers.

Cross-examination resumed:

Cross-int. 18. What was the object of quilting through the yarn?

Ans. In making this kind of a ball (Exhibit Ring) we don't wind the yarn directly around the centre of the ball, but hitch it over one side, being careful always to avoid the centre. The ball wound in this man-

ner unless the threads are quilted down they will slip off and soon the ball comes out of shape.

Cross-int. 19. Is this also true of Exhibit S Cutler 1 and 2?

Ans. Yes.

Cross-int. 20. What do you mean by "hitch it over one side"?

Ans. Well, I mean—it is easier to show than describe. The reason for hitching it round the side instead of winding it directly round the largest circumference is that our aim is to make a soft ball and one that will remain soft. Now, if I draw yarn directly round the largest circumference and continue to do so until the ball is the full size, then when the yarn shrinks from the action of the atmosphere, as it always will do more or less, the yarn hardens and tightens the ball, makes the ball become harder; but when hitched first to one side of the larger circumference and then to the other side, the yarn in shrinking will slip, instead of tightening around the ball and making it harder.

WM. A. CUTLER.

Attest:

CHAS. F. SLEEPER,
Special Examiner.

71 (It is now admitted by complainant's counsel, for the purpose of saving time and expense, that Mary Dailey, Margaret Byers, Ellen Whalan, Mary Marnell, widow of Daniel Dodge, Mary Burke, Mary McLaughton, Mrs. Ahern, Mrs. Smiddy, and Mary Riley would, if called as witnesses on behalf of the defendants, corroborate the testimony of Harrison Harwood and Harrison Harwood, jr., as to the manufacture and sale by their firm of balls like Exhibit Double Cover 1 and Double Ball 1, this admission to be used at the hearing with the same effect as if said persons had each given a deposition in the cause in corroboration as above.

It is also agreed that the affidavit of William G. Clark be put in evidence by the defendants, and be taken and considered in all respects as a deposition taken in the cause, and be used at the hearing with the same effect as if it were such deposition, with the admission by the defendants that the only balls referred to in that affidavit are balls the same as Exhibits Cutler 2 and New England Ball 1.

It is also admitted by complainant's counsel, for the purpose of saving time and expense, that Edmund R. Alexander, Albert V. Jones, Wm. F. Felch, Fayette E. Travis, Ira H. Felch, Cyrus H. Beal, Gilbert W. Underwood, Edward T. McLean, Wm. H. Tash, Josiah S. Bacon, Richard Evans, and George A. Knowlton would, if called as witnesses on behalf of the defendants, each testify that he had knowledge of the manufacture and use for several years prior to 1865 of balls the same as defendants' Exhibit New England Ball 3 and Cutler 2, this admission to be used at the hearing with the same effect as if each of said persons had given a deposition in the cause testifying as above.)

Attest:

CHAS. F. SLEEPER,
Special Examiner.

72 *Deposition of Winthrop H. Ring.*

BOSTON, *May* 4, 1878.

Direct examination by JAMES E. MAYNADIER, Esq., of counsel for defendants:

Int. 1. What is your name, age, residence, and occupation?

Ans. Winthrop H. Ring; 56; Milford, Mass.; bootmaker.

Int. 2. Did you ever belong to any base-ball club; if so, when? And give the names of all you have belonged to.

Ans. The only organized club that I ever belonged to was the Wopowage, of Milford, in '57, and '8, and '9. I think I run in the club three years—somewheres along there. I couldn't tell exactly.

Int. 3. Did you ever make balls; if so, during what time?

Ans. Yes, sir; in '57, '8, and '9; those years when I belonged to the club.

Int. 4. Please deseribe the way you made them usually during those years.

Ans. I used to weight them with lead; took common sheet lead and cut it up into narrow strips. Then I took a wad of cotton-wool, and wound the lead round the cotton till I wound out the ounce and a quarter, which I weighed out, and which was what I usually put in. Then I wound on to that lead common woolen yarn, enclosed the lead with that yarn to make it round. I then covered that in with leather. I then took a needle and thread and sewed that through the cover so as to fasten the yarn firmly to the cover on the inside. Then, after that was done I took the same kind of yarn and wound on to the outside of that cover till I brought it up to the required size. I then took a needle and thread and sewed the yarn on the outside to the inside cover; then covered it with leather, such as glove-calf or buckskin. When the leather was light I put on two covers independent of each other. This ball (Exhibit Ring) is one that I made somewhere before '60.

Int. 5. State what you know about Exhibit Ring, including how it came to be brought to this office.

Ans. Well, I made that ball somewhere in '58 or '9. I made it for the Orion Club, of Milford, to play a match game with the Wide
73 Awakes, of Upton. The ball was used in that game; came back into my possession about that time. I couldn't tell whether it was the next day. It was shortly after the game was played. It remained in my possession till the time I sold it to Nelson, about two years ago last summer, some time, I think. I went to Upton with Mr. Horace Mann, and was with him when he bought the ball of Nelson this spring, some time in March, I think it was.

Int. 6. State what you know about Exhibit Eliot.

Ans. That ball was made in a similar way to that one (Exhibit Ring.) I think this is weighted with dry white lead; otherwise it is made the same, with the exception there aint out one outside cover on this. That was made two years ago this summer. I sold the ball to Horace Mann about the same time that he bought that one of Nelson.

Cross-examination by JOSEPH C. FRALEY, Esq., of counsel for complainant:

Cross-int. 7. These balls were used, were they not, for the old fashioned New England game, in which it was a feature that the ball was thrown at the player with the intention of striking him?

Ans. Yes, sir.

Cross-int. 8. And they were purposely made soft to the feel by winding the yarn loosely?

Ans. Yes, sir.

Cross-int. 9. Why was it that you "took a needle and thread and sewed that through the cover so as to fasten the yarn firmly to the cover on the inside," and subsequently "sewed the yarn on the outside to the inside cover"?

Ans. The heavy centre would work out to one side unless it was secured by the inside cover and the stitching. The stitching on the outside of the inner cover was put there to keep the yarn from slipping off sidewise.

Cross int. 10. How many balls of that kind (Exhibit Ring and Exhibit Eliot) did you make between 1859 and the time when you made Exhibit Eliot, about two years ago this summer?

Ans. I think I might have made a dozen, somewhere about that.

74 Cross-int. 11. What year were they made in?

Ans. '75 and '6.

Cross-int. 12. For whom were they made?

Ans. Any one that purchased them from me. I made them to sell. I have three or four now on hand that I made at that time.

Cross-int. 13. Do the present base-ball clubs play with them?

Ans. Not to my knowledge.

Cross-int. 14. Have not the game of base-ball and the requirements of the balls with which it is played undergone a complete change from the time when the New England game was in vogue?

Ans. Well, the game that they play now is different from that. That game itself hasn't changed. They play that same game with the same balls. That game is called the New England game of base-ball. The game that they call the National game, they don't play with this ball (Exhibits Ring and Eliot), but with balls like these. (Witness refers to four balls in a box before him, which balls are Exhibits 56, 57, 61, and 62.)

Cross-int. 15. Do you know anything about the manufacture of such balls as these last, as it is now carried on?

Ans. No, sir.

WINTHROP H. RING.

Attest: CHARLES H. SLEEPER,
Special Examiner.

Deposition of Henry G. Harwood.

Direct examination by JAMES E. MAYNADIER, Esq., of counsel for defendants.

BOSTON, *May* 4, 1878.

Int. 1. What is your name, age, residence, and occupation?

Ans. Henry G. Harwood; 36; Natick, Mass.; base-ball manufacturer, of the firm of H. Harwood & Sons.

Int. 2. Please state what balls, with a cover of two pieces of leather, were manufactured and sold by your firm, prior to the year 1870, and to what extent such balls were manufactured and sold prior to that year, and since.

75 Ans. Well, about the year 1862, perhaps earlier, we made "New England" balls with two pieces of leather like the cover on Exhibit Cutler 2, and continued the making of those, some in every year, as late as 1866. We made a good many dozens of this kind. Since 1865 to 1870, we have made large numbers of balls, national, regulation and practice balls, and boys' balls, covered with two pieces of leather, figure 8 pattern, so called. We also made balls, from '65 to '70, like Exhibit Double Ball 1. Those are some of the balls which we have manufactured. We also made balls like Exhibit New England Ball 3. We have made balls like Exhibits A and B, since 1877. We

have made these regulation, practice and boys' balls, during that time (from 1865 to the present time) several hundred gross of them. Balls like Exhibits A and B, I don't know to what extent we have made them.

Int. 3. What has been the extent of the manufacture of your firm, as compared with that of any other manufacturers?

Ans. We have probably, during the last nineteen years, made and sold nearly three-quarters of all the balls used in the United States and Canadas, not including rubber balls without a leather cover.

Int. 4. About what proportion of the leather-covered balls made and sold by your firm have had covers "formed of two pieces of leather suitably secured to each other?"

Ans. The greater proportion; probably two-thirds, perhaps more.

Int. 5. Please state what balls, if any, were made by your firm prior to 1870, having a "covering, consisting of an outer and inner covering applied to the ball independently of each other." And produce balls which correctly represent this covering.

Ans. I produce Exhibit Double Cover 1 (calf), and Double Ball 1, and New England Balls 1, 2, 3 and 4, and Cutler 2. (Ball now put in evidence and marked New England Ball 2, C. F. S., sp'l ex'rs.) Those are some of the balls such as were manufactured by us. We made a great many hundred dozen like Exhibit Double Cover 1; and many dozen of the New England Ball, various kinds; and a good many gross like Exhibit Double Ball 1.

76 Int. 6. Are you familiar with the specification and drawings of reissue No. 7046?

Ans. I am.

Int. 7. Please state which of these balls, Exhibit New England Balls 3 and 4, Double Ball 1, Cutler 2, and H. Cover 1, if either, embody the invention described in the Mahn reissue, No. 7046, and especially referred to in the first clause of claim. And state your reasons for your answer.

(Objected to as both leading and incompetent.)

Ans. All of them. The first clause of claim says, "A base-ball cover formed of two-pieces of leather secured to each other by a single seam, substantially as and for the purpose specified." All of these have a cover of that kind, secured in that way. And the patent is for an improvement in covering rounded articles with leather, and the description consists first in the nature of my invention, of the cover of a base-ball formed of two pieces of leather, suitably secured to each other. Those are the reasons, I believe.

Int. 8. Please state which of these balls, Exhibits New England Ball 1 and 3, Double Cover 1, Double Ball 1, and Cutler 2, if either, embody the invention described in the Mahn reissue No. 7046, and especially referred to in the third clause of claim. And state your reasons for your answer.

(Same objections.)

Ans. They all do. The third clause of the claim says, "The covering of a base ball consisting of an outer and inner covering, each of which is composed of two pieces of leather and applied to the ball independently of each other, substantially as and for the purpose specified." And in the description: Third, describes a base-ball covering, consisting of an outer and an inner covering applied to the ball independently of each other. Those are my reasons.

Cross-examination by JOSEPH C. FRALEY, Esq., of counsel for complainant:

Cross-int. 9. So far as relates to the third claim of the patent, you believe it to be practically as well anticipated by balls in which the seams are of the shape shown in Exhibit Double Ball 1, as
77 it would have been by a ball in which the seams were like those of Exhibit H. Cover 1, supposing the latter were as old as the former?

(Objected to as ambiguous, the third claim relating to the use of two covers instead of one, and only incidentally, if at all, to the peculiar seam described in the patent.)

(Witness says, "What do you mean by anticipated"? Counsel says, "I mean embodying the invention at a time before it was known to the supposed inventor."

(The question is again objected to on the ground that it is unintelligible to the defendants' counsel, when taken in connection with the complainant's counsel's definition of the word "anticipated.")

Ans. I do.

HENRY G. HARWOOD.

Defendants here rest.

78 United States circuit court, district of Massachusetts. In equity.

LOUIS H. MAHN
vs.
HARRISON HARWOOD ET AL.

EVIDENCE FOR COMPLAINANT IN REPLY.

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me,

CHAS. F. SLEEPER, *Special Examiner.*

Present, Joseph C. Fraley, esq., and Patrick J. Flatley, esq., of counsel for complainant; James E. Maynadier, esq., of counsel for defendants.

Second deposition of Louis H. Mahn.

BOSTON, *May* 7, 1878.

Direct examination by JOSEPH C. FRALEY, Esq., of counsel for complainant.

Int. 1. What is your name, and have you ever before testified in this case?

Ans. Louis H. Mahn. I have.

Int. 2. Please state how a double-cover yarn base-ball is made, and illustrate the manufacture by any samples you may have.

(Objected to as immaterial and not in reply.)

79 Ans. We first take a rubber core and wind yarn tightly round the rubber (witness here produced a rubber core, which is now put in evidence and marked Comp't's Exhibit Rubber Core, C. F. S., sp'l ex'r) to the size shown in Exhibit Inner Yarn (now produced and put in evidence); the said yarn is wrapped very hard and tight, being batted every few moments with heavy boxwood bats, for the purpose

of making the ball compact and hard. A cover is then cut to the proper size and sewed on wet. The cover is then allowed to dry and shrink to the yarn like Exhibit Inner Cover (now produced and put in evidence). When dry the ball is then taken and wound to the size of Exhibit Outer Yarn (now produced and put in evidence). We then take a fine woolen finish to make the exterior of the cover smooth. Two pieces are then cut of the proper size and sewed on to the ball, wet, so that it would shrink to the yarn also. The ball is then complete, like Exhibit Finished Ball (now produced and put in evidence).

Int. 3. Supposing that there were to be no yarn between the covers, wherein would the process differ from the one described?

(Same objection.)

Ans. Simply the making of the inner ball larger, also the cover larger.

Int. 4. Describe the way in which a gimpings or scrap ball is made, and illustrate your description by any samples you may have.

(Same objection.)

Ans. We take a handful of scraps of the size of Exhibit Scrap (now produced and put in evidence), and wind down with a yarn binder until the proper size of ball required. It is then like Exhibit Scrap Ball with Binder (now produced and put in evidence). We then put a fine finish to prepare for the cover. The cover is then put on the same as in a yarn ball.

Int. 5. State whether or not you make all-yarn balls, or balls without rubber centres, with the double cover described by you.

(Same objection).

Ans. I have, several hundred dozen.

Int. 6. Please produce, if you have them, double-cover balls with the covers in contact, which have been used, and state to what usage such balls have been subjected.

80 Ans. I here produce two balls (now put in evidence and marked Exhibit Lynn and Exhibit Boston, C. F. S., sp'l ex'r). The ball Exhibit Lynn was used in two games. After the first game I took the outer cover off and recovered it with another cover, and used it in part of another game. The ball marked Exhibit Boston was used in three games, one in Lowell, and two on the Boston ground, being recovered with an outer cover for each game.

Int. 7. Why did you take the outer cover off and recover it? and what was the condition of the inner ball when you did so?

Ans. The inner ball was perfectly round in shape, and the cover of it in good condition. In every game where a base-ball—which means a regulation ball—is used, the size, weight, and maker's name has to be on it.

Int. 8. Please examine Exhibits A and B, and, referring to your description of how a double-cover ball is made, say whether or not they have been made by the same process.

(Same objection.)

Ans. I find them made in the same way, for the same purpose, and constructed similar in every particular.

Int. 9. What is the purpose and effect of the inner cover in the ball described in Exhibit Mahn reissue? And state wherein it resembles or differs from the purpose and effect of the inner cover of Exhibits A and B.

(Same objection.)

Ans. To make the ball dead or lively and to keep its sphericity. The resemblance is the same, except one takes a larger piece of leather

than the other. The effect cannot differ. The effect is the same on both.

Int. 10. Please examine Defendants' Exhibits N. Eng. Balls 1, 2, 3, and 4; and assuming them to be all of substantially the same interior construction, and that each of them has a centre of lead, state what, in your opinion, is the purpose and effect of the inner cover of said balls.

(Same objection.)

Ans. I can see no purpose for an inner cover on said exhibits, unless it be for the purpose of keeping the pieces of lead or shot
81 from shifting and mixing up with the yarn; for it can have no other purpose, in my estimation, on a ball with a soft interior.

Int. 11. Please examine Exhibits Cutler 1 and 2, and, assuming the yarn to be wrapped in the same loose manner as that of the New England ball, state whether or not, in your opinion, the inner cover thereof would tend in any substantial degree to preserve the sphericity of said balls.

(Same objection.)

Ans. No, sir.

Int. 12. Please examine Defendants' Exhibit Double Cover 1, and state whether you find in said ball the usual binder of string or yarn, such as is ordinarily used on scrap balls.

Ans. I do find a heavy string binder.

Int. 13. State whether or not, in your opinion and from your experience in the use of scrap balls, the double leather cover upon said ball (Exhibit Double Cover 1) would afford any substantial assistance to said string binder in preserving the sphericity of said ball.

(Same objection.)

Ans. No, sir; it would not; for I don't think a ball can be made of scraps that will keep its sphericity any way, after even one inning's batting.

Int. 14. Please examine Defendants' Exhibit Double Ball 1, and state whether or not you find the usual string binder on the inner ball of said exhibit; and whether or not, in your opinion, the double cover of said ball would afford any substantial assistance to said string binder in preserving the sphericity of said ball.

(Same objection, and also to the last clause as leading.)

Ans. I find the usual rubber string binder, and am positive a scrap ball cannot be made that will keep its shape, even with three covers, and batted a regular game of ball.

Int. 15. Please state whether or not either of said balls last mentioned (Double Cover 1 and Double Ball 1) would preserve its round shape under hard usage any better than if it had a single leather cover.

(Same objection, and also as leading.)

Ans. No, sir; I do not think it would keep its shape any better.

82 Int. 16. Have you ever made balls like Exhibit Double Ball 1?

Ans. I have.

Int. 17. State whether or not such a method of disposing of balls called "seconds" has been usual among manufacturers.

Ans. I could not state positively, but think it a very convenient and cheap way of using balls called "seconds;" for in taking off the cover, where yarn is underneath, or binding material, it so displaces the binding material, that it is much cheaper to leave the old spoiled cover on.

Int. 18. Referring to Exhibits New England Ball 1, 2, 3, and 4, and Cutler 1 and 2, please state whether or not, in your opinion, said balls would retain their round shape under hard usage, unless they were

stitched and sewed through and through, as has been described by some of defendants' witnesses.

Ans. They might be made a trifle firmer by sewing through and through with yarn or string, and stand such usage as they were intended for; but as for standing a game with such pitching as is in use now, they would not stand one inning.

Int. 19. Would it be possible, in your opinion, to stitch through with a needle the yarn in Exhibits A and B, or of the samples which you produced, to illustrate the manufacture of yarn balls?

(Same objection.)

Ans. No, sir; it could not be done.

Int. 20. State whether or not the inner cover upon Exhibits A and B, or the inner cover upon the Exhibit Mahn Reissue, are intended to or do prevent the rubber centre from moving about in the yarn of those balls. Give your reason for any statement you may make.

(Same objections, and also as incompetent.)

Ans. The yarn is wound up tightly on and from the rubber, and I never knew or heard of a solid rubber shifting in any modern ball. It would work different in case it were a rubber ball in the centre of scraps, where the ball is wound down with yarn binding on the scraps instead of being wound up.

Noon recess.

(Examination deferred to take the deposition of James H. Osgood.)

83 BOSTON, *May 8th*, 1878.

Int. 21. State if you have compared the single-cover yarn ball with the double-cover yarn ball in actual use; and if so, what has been the result of such comparison, as regards the capacity of said balls for keeping their shape.

(Objected to as immaterial and not in reply.)

Ans. I have. Since 1872 I have continually experimented, especially during '72 and '3 with balls having single covers, and balls having double covers in contact, and balls having two covers with yarn between. During these experiments I had a double object in view; the selection of a yarn suitable for my purpose, which I found very difficult to decide upon, having tried as many as 100 different grades, which, after repeated trials, I decided upon two kinds. Again, my object was to discover the difference, if any, between a single and double cover, with or without yarn between the two covers. In my experiments I had the help of the oldest professional base-ball player in the country. I found by actual practice and use of the balls that a single-cover all-yarn ball, could not be made that would stand and retain its shape right through a dozen of balls. Occasionally one might be found that would retain its shape, but by far the majority would get crooked. Now I have actually in my possession several hundred of each, single and double, the covers in contact and the yarn between, that I have seen played with myself. I have never found, during my experience, a ball with two covers in contact, or with yarn between, that would not retain its perfect shape and sphericity.

Int. 22. Explain the manner in which a single-cover yarn ball gets out of shape.

Ans. The cover, after repeated batting, gets pliable and loose; the yarn follows the cover up, slides to one side and so almost half-way to the core.

Int. 23. Explain the manner in which the independent inner cover or binder acts in preventing this displacement of the yarn.

Ans. There is no difference between the working in this respect, between the covers in contact and with yarn between the covers.

84 You will see, by looking at Exhibits A and Boston, the yarn finds a channel for itself on the top of the inside cover, which prevents it from sliding to one side, whereas the yarn wound upon itself is more slippery and, loosened by following up the stretching of the outside cover, naturally throws the ball to one side. This cannot occur in double-cover balls, for I have always found that even if the outside cover does loosen the inside cover does not.

Int. 24. Produce a sample of double-cover balls with yarn between the covers, which has been played with.

Ans. I produce a ball marked Exhibit Hartford (now put in evidence). It is one of my make, and was played with twelve innings, with wet grass; and it is perfect in shape, and was thoroughly wet, and is now the same size as when it was put in. This ball was played with by the Bostons and Hartfords, professionals, at Brooklyn, N. Y., the usual game being nine innings; but the game being a tie at the end of the ninth inning, three more were played on each side. The umpire then called the game on account of darkness, and decided it a draw game.

Int. 25. State whether you ever bought balls called "seconds" from these defendants; and if so, how long ago, and whether you then derived any information from either of the defendants as to the mode of recovering gimping balls, where the inner cover was not fit for sale.

Ans. Some time during 1870, I think in May, I went to Mr. Harwood's factory and was there shown a barrel of "seconds." Among these balls in the barrel were a few with covers slightly torn on the outside or partly sewed, where there could be seen an inside cover. I also remember having some conversation in regard to it, and was told it was easier and cheaper to leave the old cover on than to tear it off and recover it.

Int. 26. State whether you ever communicated this fact in regard to the method of manufacture of gimping balls with two covers to the patentee, James H. Osgood, and, if so, when; and what led you to do so; and what was the substance of your conversation with him at the time on this subject.

Ans. I did. I cannot state the positive month, but it was some time during 1870. I thought it might have a tendency to interfere

85 with our patent which we proposed to get out. This conversation might have taken place in 1871. As to the exact date and year I am not positive, but it was shortly before we applied for the patent. I simply referred to this ball as having two covers by accident. As to the exact wording of his answer I am not positive, but he remarked it had no relation to the patent at all.

Cross-examination by JAMES E. MAYNADIER, Esq., counsel for defendants.

Cross-int. 27. Please read the 5th int. and ans. of Mr. Osgood and state whether you agree with him or not. And, if not, state wherein. (Objected to as incompetent.)

Ans. I do not exactly. The way I understand the third claim it might apply as he answers it. Not being so conversant with the meaning, and having been out of the ball business for some years, he naturally forgets some few things in regard to it. I should think the meaning was, and know it to have been, two independent covers applied to a ball independently of each other, with or without yarn between.

Cross-int. 28. Now, please read cross-int. 16, of Mr. Osgood, and his answer, and state whether you agree with him or not; and, if you do not, state wherein.

(Same objection.)

Ans. I do not. [Neither do I think Mr. Osgood understood the question put; for Mr. Osgood, reading the testimony in the Reach case of Harrison Harwood, he then told me that he did not think we could stop Mr. Harwood from putting two covers any way he pleased on a scrap ball.] I am satisfied Mr. Osgood meant all kinds of yarn or regulation balls. First, a yarn ball can be made with two covers that will stand any amount of batting; in a single cover it will not stand; neither will it in a scrap ball keep its shape, even if there were six covers on it.

(The part in brackets objected to as not responsive, and incompetent and irrelevant.)

Cross-int. 29. Do you believe that that third claim covers all
86 manner of yarn balls supplied with two envelopers, regardless of the pattern of such covers or the relativity of seams?

(Same objection.)

Ans. I do not, all yarn balls. I think it has reference to the regulation, or where the properties of a hard ball are necessary; for instance, if a soft all-yarn ball were in question, with or without a core, I cannot see where an inside cover could be of any use; consequently I cannot see where the object would interfere.

Cross-int. 30. Do you believe that the ball marked Cutler 2, has not a covering "consisting of an outer and inner covering, each of which is composed of two pieces of leather and applied to the ball independently of each other"? If not, state fully why.

(Objected to as irrelevant unless it refers to the third claim of Exhibit Mahn Reissue; and if it does refer to said third claim, objected to as misleading, because the whole of said third claim is not read to the witness.)

Ans. I do not think it has two covers independent of each other for the purpose specified in our patent.

Cross-int. 31. Do you think it has two covers, each in two pieces, independent of each other?

(Same objection.)

Ans. I find here a ball smaller than any base-ball I ever saw, the object of which I never heard quoted. What the object of two pieces of wash leather on top of each other can be, or have any relation to specification of patent, I cannot see; for on the pressure of the fingers on the ball shown me (Cutler 2) it cannot be made square, round or oblong. It may have two covers, as I have been asked, but I cannot conceive the object.

Cross-int. 32. Do you believe that the ball marked Double Ball 1, has not a covering "consisting of an outer and inner covering, each of which is composed of two pieces of leather, and applied to the ball independently of each other"? If not, state fully why?

(Same objection.)

Ans. It may have two covers, as I have been asked; but I find a ball composed of scraps with a binder of rubber and a cover of paper, which, if it had two more covers on top of these would not hold its shape, consequently I do not see the object of the cover.

Cross-int. 33. Has it, or not, a covering "consisting of an
87 outer and inner covering, each of which is composed of two

pieces of leather and applied to the ball independently of each other"?

(Same objection.)

Ans. The ball marked Exhibit Double Ball 1, is a scrap ball and has two coverings of leather independent of each other.

Cross-int. 34. Has not each one of the balls now shown you, (marked Exhibits New England Ball 1 and 3, Cutler 2, Double Cover 1, and Double Ball 1,) a "covering consisting of an outer and an inner covering applied to the ball independently of each other."

(Same objection.)

Ans. I find five balls presented to my notice. I also find each one with an inner and outer cover independent of each other; but I do not find a single one of the five that has attached to it in any way either of the two main points in our specified ball mentioned in the patent, as our object is covered by two principal points which I do not find, for they are all five soft balls.

Cross-int. 35. The Mahn reissue is a patent for an "improvement in covering rounded articles with leather;" and in the specification the inventor states that he has "invented a new and useful improvement in covering base balls and other similar articles," and that "the nature of his invention consists first in the cover of a base ball formed of two pieces of leather, suitably secured to each other." Are not the covers of the balls now shown you (marked Exhibits New England Ball 3 and 4, Double Ball 1, and Cutler 2), precisely such in your opinion, as described in that part of the specification above quoted? If not, explain why you think they are not.

Ans. I think, as far as the covers are concerned, they are.

(Adjourned.)

BOSTON, *May* 9, 1878.

Cross-int. 36 (de bene). In your second answer you describe in detail "how a double-cover yarn base-ball is made." Is this the only way in which you manufacture balls; and is it the only way in which balls are manufactured by others, so far as you know? If not, please
88 describe all the other ways of making balls you have knowledge of, and state which of such ways, if any, you assert to be of the invention of James H. Osgood.

(Objected to as the only invention of James H. Osgood, which is relevant to this case, is the base-ball described in the reissue 7046.)

Ans. No, sir. We also make balls of scraps, wound down with a binder of yarn, upon which binder of yarn is placed a soft finish to prevent the coarse strands of yarn from showing through the cover. We also make balls of scraps of rubber, also half scraps and half yarn. I have also known balls to be made of scraps of woolen cloth or listing. These latter kinds have been made by several other dealers also. None of these are of the invention described in the Osgood patent, for all those described in this answer are scrap balls and have no bearing on the Osgood patent.

Cross-int. 37. The reissue patent is for an improvement in covering rounded articles with leather, and the inventor states that he has invented a new an' useful improvement in covering base-balls and other similar articles, and that the nature of his invention consists first in the cover of a base-ball formed of two pieces of leather, suitably secured to each other. Are not the balls now shown you, Exhibits 60, 61, 62, 63, 64, and H. Cover 1, all within the above description, and does not each one of them embody what the inventor says is the first feature of his in-

vention, in your opinion? If you think not, state fully why not; and if you think that either one of them does, state fully why you think so.

Ans. I do not think they all do. Defendants' Exhibit H. Cover 1, covers a part of the claim, and the other five do as far as taking two pieces of leather and securing them to each other. Exhibit H. Cover 1 I find in the invention as a new article for covering rounded objects with leather, also as to the hemispherical sections.

(Objected to as incompetent.)

Cross-int. 38. Do you believe that either of these balls (Exhibits 60, 61, 62, 63, 64 and H. Cover 1), embodies any invention described in the Mahn reissue? If so, which of the four inventions is embodied in each of the balls?

Ans. Nos. 60, 61, 62, 63 and 64, embody no part of the invention. Of course I can't tell whether there is an inside cover in them or not; they may be all yarn, for they are not cut open. H. Cover
89 1, I find as described as embodying a different style of cover from the rest, and as mentioned in one part of the reissue as being hemispherical and of having two covers. I say that ball (Exhibit H. Cover 1), covers the first claim as far as hemispherical cover outside is concerned. If it has an *an* inside cover it would also have a bearing on claim 4, but I cannot see whether it has or not. Claim 2, I do not find on the ball. It would also have a bearing on claim 3, provided it had an inside cover.

Cross-int. 39. Can't you tell whether Exhibit H. Cover 1, has a single cover, or whether it has two covers in contact? If you cannot, without cutting the ball, state what your opinion is.

Ans. I can't tell without cutting the ball. I think the ball has an inside cover in contact with the outside, from the appearance of the outside.

Cross-int. 40. Suppose the covers of Exhibits New England Ball 1 and 3 were both of them constructed precisely as described in the Mahn reissue—that is, each made up of two hemispherical sections moulded into shape before being applied—and state whether either of those balls, with this change, would embody the invention described in the Mahn reissue, so far as it is referred to in either of the claims.

(Same objection.)

Ans. No, sir.

Cross-int. 41. Do you believe that a ball consisting of a rubber or cork core and yarn tightly wound on till the ball is of proper size would embody the invention described in the Mahn reissue, so far as it is referred to in either one of the claims; I mean without any cover of any kind?

(Same objection.)

Ans. I do; but it would have to be in connection with the two outside covers to give us the object.

Cross-int. 42. Question repeated.

(Repetition objected to, as already fully answered.)

Ans. I do; for it is the beginning of the very description given in the patent.

Cross-int. 43. Were not balls made in this way, to your knowledge, before 1870? And was not this the usual way of preparing
90 the balls to be covered at the time Mr. Osgood made his invention?

Ans. To a certain extent it was; but the previous question being worded from the patent, and meaning for some purpose as applied to

the patent, I find such balls made in that way substantially and for the purpose specified, as the object of balls made previous to 1871, for professional players, was entirely different from what has been wanted since.

Cross-int. 44. Suppose the covers of Exhibit Double Cover 1 were both of them constructed precisely as described in the Mahn reissue—that is, each made up of two hemispherical sections moulded into shape before being applied—and state whether that ball, with this change, would embody the invention described in the Mahn reissue, so far as it is referred to in either one of the claims.

(Objected to as incompetent.)

Ans. No, sir; except in the question the word hemispherical is used, that part would embody the claim. I also should say if both covers were hemispherical sections they would apply to double covers, but being made of scraps would not obtain the object.

Cross-int. 42. Suppose the covers of Exhibit Double Ball 1 were both of them constructed precisely as described in the Mahn reissue—that is, each made up of two hemisperical sections moulded into shape before being applied—and state whether that ball, with this change, would embody the invention described in the Mahn reissue, so far as it is referred to in either one of the claims.

(Same objection.)

Ans. It would not embody the invention; but I would find hemispherical covers, as asked, with yarn between said covers on a scrap ball, which would be useless for the object we require.

Cross-int. 46. Would the manufacturer of balls just like Exhibits New England Ball 1 and 3, Double Cover 1, and Double Ball 1, infringe upon the Mahn reissue, in your opinion? If so, to which claim?

(Same objection.)

Ans. No, sir; he would not; [for the reason that I find no ball that has been shown me, or that I have seen, that I should find any
91 fault with infringing on the patent, except Complainant's Exhibits A and B—I mean in this case.]

(All that in brackets objected to as not responsive.)

Cross-int. 47. Would the manufacturer of balls just like Exhibits New England Ball 1 and 3, Double Cover 1, and Double Ball 1, except that the cover were precisely as described in the Mahn reissue, infringe upon Mahn reissue, in your opinion?

(Same objection.)

Ans. No, sir; except as to the shape of the hemispherical section.

Cross-int. 48. Suppose Exhibits A and B had no rubber or cork core, but had a core of the same size as the rubber core, made by winding yarn and fine strips of thin sheet lead into a ball; would they then infringe the Mahn reissue, in your opinion?

(Same objection.)

Ans. They would.

Cross-int. 49. Now suppose that they had hard twine in place of the yarn, tightly wound; would they then infringe, in your opinion? I mean, just the same as they are now, exactly, except that they had hard twine instead of the yarn.

Ans. They would, if wound up hard; for the inside cover will allow us to use inferior yarn or twine, and still give us the object we claim; where a scrap filling or single-cover ball would not keep its shape.

Cross-int. 50. How is it with fine, flexible wire in place of the yarn; in Exhibits A and B?

(Same objection.)

Ans. If wound up the same as yarn and such a thing were possible as to use it, it might.

Cross-int. 51. Now, suppose balls made precisely like Exhibits New England Ball 1 and 3, except that the yarn was tightly wound, enough yarn of course being used to make them the same size as the exhibits; and state whether they would infringe the Mahn reissue, in your opinion.

(Same objection.)

Ans. If wound tightly up to the required size the same as Exhibits A and B, they would infringe, but as the exhibits shown me
92 are not at all like the description given, and as the object cannot possibly be embodied in them, for as they are, they would not infringe.

Cross-int. 52. I mean just exactly like Exhibits 1 and 3, in size and all other respects except that the inner yarn is wound tightly over the weighted core and the outer yarn wound tightly over the inner ball. Please answer the preceding question, with this explanation.

(Same objection.)

Ans. If wound as tightly as a ball described, and which I do not see, the same object might be obtained if the size was such that it could be of use.

Cross-int. 53. What is the object you have referred to in your 52d, 51st, and 49th answer?

(Same objection.)

Ans. To make a ball of a yarn or other suitable material which can be wound up from itself or core, so that by the application of two covers inside and outside in contact or independent, that it will keep its shape, our object in the first part is obtained. Again, by different applications of the covers we obtain the deadness or liveness of the ball. These are my two objects of which I spoke.

Cross-int. 54. Do you stamp balls with the size and weight and maker's name, made of gimpings.

Ans. I do.

Cross-int. 55. Is this one of them? (Now put in evidence and marked Exhibit X, C. F. S., sp'l ex'r.)

Ans. Yes, sir; I should say it was.

Cross-int. 56. Do you call that a base-ball?

Ans. I should call that a dead ball but not a regulation. They are made up for parties to suit the prices and kind called for.

LOUIS H. MAHN.

Attest:

CHARLES F. SLEEPER,
Special Examiner.

(Complainant here puts in evidence, by agreement, a copy of the answer in the suit of Mahn vs. Reach et al.; and it is agreed that either party may use at the hearing the depositions of Harrison
93 Harwood, Louis H. Mahn, and James H. Osgood, in said case, copies of which are now put in evidence.)

Attest:

CHAS. F. SLEEPER,
Special Examiner.

In the United States circuit court for the eastern district of Pennsylvania. April sessions, 1876. In equity.

BETWEEN LOUIS H. MAHN, COMPLAINANT,
vs.
ALFRED J. REACH AND ALBERT C. JOHNSTON, trading as Reach & Johnston, defendants. } No. 39.

To the honorable the judges of said court:

The answer of Alfred J. Reach and Albert C. Johnston, the defendants above named, to the bill of complaint of Louis H. Mahn, complainant.

The said defendants, upon their several and respective corporal oath, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, do make full, true, direct, and perfect answer to such of the several interrogatories numbered and set forth in complainant's bill of complaint, as by the note at the foot of said bill they are respectively required to answer; that is to say:

1. They are informed and believe that letters patent were granted to James H. Osgood and reissued to Louis H. Mahn, complainant, as assignee of said Osgood, for the invention of "an improvement in covering rounded articles with leather," substantially and as described and set forth in the specifications attached to said letters patent, and the reissue thereof.

94 They are also informed and believe that complainant is now the sole and exclusive owner of said reissued letters patent.

2. They have not, at Philadelphia or elsewhere in the United States, made, used, or sold, or caused to be made, used, or sold, base-balls made in accordance with and containing and embodying the invention patented in said reissued letters patent. They, the defendants, have been for several years engaged in the manufacture and sale of various designs of base-balls, each and every of them differing in form, purpose, and principle, from the invention protected by complainant's reissued letters patent. That they have not infringed, and are not infringing, any of complainant's patented rights.

Without this, that there is any other matter or thing material for the said defendants to answer not herein answered, and reserving all exceptions to the manifold errors of the bill, they ask that it be dismissed with costs.

JOHN J. ROGERS,
Solicitor for Defendants.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Alfred J. Reach and Albert C. Johnston, having been duly sworn, depose and say that they have each read the foregoing answer by them subscribed, and know the contents thereof, and that the statements therein contained, so far as made of their own knowledge are true, and so far as made upon information and belief they believe them to be true.

Sworn and subscribed before me this day of , A. D. 1876.

95 *Deposition of James H. Osgood.*

BOSTON, *May* 7, 1878.

Direct examination by JOSEPH C. FRALEY, Esq., of counsel for complainant.

Int. 1. What is your name, age, residence, and occupation?

Ans. James H. Osgood; 44; Boston; physician.

Int. 2. State whether you were ever engaged in the manufacture of base-balls in connection with this complainant, Louis H. Mahn; and if yea, give the time during which you were so engaged.

Ans. I have been so engaged. From early in March, '71, to January 8th, '75.

Int. 3. Are you the person for whose invention the letters patent No. 127098 and the reissue No. 7046 were granted?

Ans. I am.

Int. 4. Please examine the testimony of Mr. Louis H. Mahn, in answer to questions 2, 3, 4, and 5 of his second deposition, and state whether you agree with him in his statement as to the manufacture of double-cover yarn-balls and gimpings or scrap-balls.

(Objected to as leading.)

Ans. I do.

Int. 5. Please examine Exhibit Mahn Reissue, and state if you understand the nature of the invention therein specified and shown; and referring to the third claim of said patent, state wherein said invention, so far as it is referred to in said claim, consists.

Ans. I do. It consists in the application of one cover independent of and enclosed by the other.

Int. 6. Please examine the balls now shown you, being Defendants' Exhibits New England Balls 1, 2, 3, and 4, and assuming them to be all of substantially the same interior construction and material, and that each of them has a core or centre of lead weighing about an ounce; state what, in your opinion, is the purpose and effect of the inner cover in said balls, and how far it resembles or differs from the purpose and effect of the inner cover or binder of Exhibit Mahn Reissue.

(Objected to as immaterial and not in reply.)

96 Ans. I find here a yarn-ball very loosely wound, very soft, and entirely unfit for the purpose for which our patented balls are intended. If the inner cover serves any purpose whatever it is simply that of limiting the displacement of the lead centre, and can tend in no degree to the preservation of sphericity of the ball, which is the principal effect sought from the inner cover specified in the patent.

Int. 7. Please examine the gimpings or scrap-balls now shown you, (Exhibits Double Cover 1 and Double Ball 1), and state how far, in your opinion, the independent double covering on said balls resembles or differs from, in purpose and effect, the independent double covering upon a yarn-ball such as is shown or described in Exhibit Mahn Reissue, giving your reasons for any statements you may make.

(Objected to as immaterial and incompetent, and also as based upon an entire misapprehension of the specification and drawings of the Mahn reissue.)

Ans. The purpose sought in the inner cover is not effected by the inner cover in these exhibits, nor could it be effected by any number of covers in a gimpings-ball. No gimping-ball has ever yet been pro-

duced which would preserve its shape through a game of base-ball, as at present played; the effect can only be obtained in a ball very largely composed of yarn.

Int. 8. Please examine the balls now shown you (Exhibits Cutler 1 and 2), and assuming the interior of said balls to be composed of loosely-wrapped yarn with a bullet or lead centre, substantially like that of the New England balls; please state whether, in your opinion, the independent double covering on the exterior of said balls would preserve their round shape in use, unless the loosely-wrapped yarn were stitched together through and through, as has been described by the defendants' witnesses.

(Objected to as immaterial and not in reply.)

Ans. They would not preserve their shape without or with said stitching. The only effect of the stitching would be the possible prevention of the relative movement of the lead centre.

97 Cross-examination by JAMES E. MAYNADIER, Esq., of counsel for defendants:

Cross-int. 9. In your sixth answer you speak of "our patented balls." Please explain whom you mean by "our."

Ans. I refer to Mr. Mahn as proprietor of the patent, and myself as the inventor.

Cross-int. 10. Please give the numbers and dates of all the patents which describe any ball invented by you, now owned by Mr. Mahn, and which you referred to in your 6th answer.

Ans. They have already been given in various replies. I mean letters patent 127098, and reissue 7046. Said letters patent dated May 21, 1872, and said reissue dated April 11, 1876.

Cross-int. 11. Were these the only patents you referred to in your 6th ans. when you spoke of "our patented ball"?

Ans. They were.

Cross-int. 12. Do you believe that any kind of a ball is claimed in either of claims of the original letters patent, marked Exhibit Osgood Patent?

(Objected to as ambiguous, and the counsel is requested to state whether by the words "any kind of a ball" he means every kind of ball.

To which request the defendants' counsel makes no reply whatever.)

Ans. I do.

Cross-int. 13. Please explain fully what kind of a ball, and which of the claims it is claimed in, in your belief.

Ans. The first claim covers any manner of ball, the exterior of which is substantially as described, for without a ball there could be no ball exterior.

Cross-int. 14. Do you not also believe that the second claim covers any manner of ball, having a cover composed of two hemispherical pieces secured together by the double herring-bone stitch described?

Ans. The second claim is merely one additional to the first, in regard to the manner of sewing the covers.

Cross-int. 15. Do you believe that that first claim covers any manner of ball whose exterior is composed of two covers, the seams
98 of which break joints, or only any manner of ball whose exterior is composed of two covers, each cover made up of two hemispherical pieces of leather, the seams breaking joints?

Ans. I intended it should, and believe it does, cover all manner of

balls supplied with two envelopes, regardless of the pattern of such covers or the relativity of seams.

Cross-int. 16. Your present belief is that the third claim of the Mahn reissue covers all manner of balls supplied with two envelopes, regardless of the pattern of such covers or the relativity of seams, is it not?

(Objected to as incompetent.)

Ans. It is.

Cross-int. 17. How long have you known balls having a cover of a pattern which has been called in this case the figure 8 two-piece pattern, a sample of which is on Exhibit 61, now shown you?

Ans. Over seven years.

Cross-int. 18. In your deposition in the suit of Mahn vs. Reach, you say, in answer to the 3d int., that you commenced the manufacture of base-balls with the complainant early in June, '71; and in your 2d ans. in this deposition you fix the same date as early in March, '71. Please explain why it was in March rather than in June, '71, according to your present recollection.

Ans. I was not expecting to be required to give the date at the time my former deposition was made, and not having had occasion to look up the exact date, I gave it in accordance with my best recollection at the time. I have since assured myself that it was March instead of June.

Cross-int. 19. How long after you commenced business with Mr. Mahn in March, '71, did you think of the cover made of two hemispherical pieces of leather moulded into shape, and the knotted lock stitch.

Ans. I thought of it long before I commenced business with him.

Cross-int. 20. How long before, as near as you can now tell?

Ans. At least a year.

Cross-int. 21. Did you cover any balls with this cover, I mean a cover made of two pieces of leather moulded into a hemispherical form, before you commenced to manufacture balls with Mr. Mahn, in March, '71? If so, how many, as near as you can now recollect, and was the stitch the ordinary one or the knotted stitch?

99

Ans. I did not.

Cross-int. 22. Your answers to the 19th and 20th cross-ints. seem to me to be in conflict with this part of your answer to the 4th question in your deposition in the suit of Mahn vs. Reach, which I now quote. "Answer. Being engaged with him (Mahn) in the manufacture of base-balls, I was led, by the manifest demand for balls of a more uniform and durable character than could at that time be had, to undertake the construction of a more perfect article; various devices were tried by me to affect said purpose, which was finally accomplished by the adoption of the double cover and knotted stitch." Please read those answers and state whether you think there is a conflict or not, and if you think there is, make any explanation as to it which you may desire.

Ans. I do not think there is any conflict.

Cross-int. 23. How long before you first thought of this cover of two hemispherical pieces of leather, had you known the cover of the two piece figure 8 pattern?

Ans. I cannot possibly tell; probably ever since they were first in use.

Cross-int. 24. In your reissue you state that you "have invented a new and useful improvement in covering base-balls and other similar articles;" also, that "the nature of my invention consists, first, in the cover of a base-ball formed of two pieces of leather suitably secured

to each other." It seems clear to me that the cover, of the figure 8 two-piece pattern, is a "cover of a base-ball formed of two piece of leather suitably secured to each other;" and as you have just said that this figure 8 two-piece pattern of cover was known to you before you thought of the two-piece hemispherical pattern, that the statement quoted from your reissued specification as to the first part of your invention, is not true. Please state whether you agree with me, or not, as to this, and make any explanation you may desire as to how you came to state in your reissue, that one part of your invention was "the cover of a base-ball formed of two pieces of leather suitably secured to each other."

100 Ans. My statement referred to is strictly true, and it would be impossible to apply a cover of two hemispherical parts, without suitably securing to each other two pieces of leather; and I have the same right to make that claim that I have to include the sewing in my claim.

Adjourned.

BOSTON, *May* 8, 1878.

(Witness here states that his attention having been called by complainant's counsel, since leaving here yesterday, to his testimony upon cross-examination to the fact that in reply to int. 13, he made a statement at seeming contradiction with testimony previously given on his direct examination, and upon reading said answer he desires to so qualify it, that it may read: "Any manner of ball, substantially as described in his original patent," as follows: "This ball is made in the usual way with a rubber or cork core, and the yarn tightly wound on till the ball is the proper size;" the exterior of which is substantially as described. In answer to int. 15 I desire to interpose between the words "balls" and "supplied" the words "substantially as described." In answer to int. 16 I desire to interpose between the words "balls" and "supplied" the words "substantially as described." By the term base-ball, I wish to be understood as meaning a ball consisting of a core of cork or rubber, and yarn tightly wound thereon to the required size, and properly covered.)

Cross-int. 25. Why did you not correct your answer to the 5th direct interrogatory, which you were just referred to by complainant's counsel, and examined? Doesn't it, in your opinion, require the same correction as the answers which you have corrected?

Ans. Having given the meaning of my term "base-ball," I consider no correction and qualification in my reply to int. 5 necessary?

Cross-int. 26. Do you understand your 5th answer to mean that the invention described in the Mahn reissue, so far as it is referred to in the 3d claim, consists in the application of one cover, independent of and enclosed by the other to a ball or other rounded article? Or only that it consists in the application of one cover independent

101 of and enclosed by the other to a ball, consisting of a core of cork or rubber, and yarn tightly wound thereon to the required size?

(Objected to, as the claim in question says what it means, and presumably means what it says.)

Ans. I consider, so far as referred to in the third claim of the Mahn reissue, the invention consists of the covering of a base-ball, consisting of an outer and an inner covering, each of which is composed of two pieces of leather, and applied to the ball independently of each other, substantially as and for the purpose specified.

Cross-int. 27. Question repeated.

Ans. I consider the third claim of the Mahn reissue as referring to the covering of base-balls only.

Cross-int. 28. If I understand you, you believe that the invention described in the Mahn reissue, so far as it is referred to in the third claim, consists in the application of one cover independent of and enclosed by the other, to a ball consisting of a core of cork or rubber, and yarn tightly wound thereon to the required size; and does not consist in the application of one cover independent of and enclosed by the other to a ball or other rounded article, not made up of a rubber or cork core with yarn tightly wound thereon to the required size. Do I understand you right?

Ans. I believe that the invention described in the Mahn reissue, so far as referred to in the third claim, consists in the application of one cover, independent of and enclosed by the other, to a base-ball.

Cross-int. 29. Question repeated.

Ans. Having already given my definition of the term "base-ball," I cannot give a clearer answer to this twice repeated question.

Cross-int. 30. Do you believe that the invention described in the Mahn reissue consists in the application of one cover, independent of and enclosed by the other, to a ball or other rounded article, not made up of a rubber or cork core with yarn tightly wound round thereon to the required size?

Ans. I do not, except in regard to the stitch, which is applicable to the sewing of any leather covering whatsoever.

Cross-int. 31. You believe that the invention described in the
102 Mahn reissue, so far as is referred to in the second claim, consists in any rounded article, whether a ball, "a base-ball" (as you define it) or pack or military saddle having a cover of leather or any other suitable material, the seams of which are united by the double herring-bone knotted lock-stitch; do you not?

(Objected to, as the second claim of the patent says what it means, and presumably means what it says, and the witness is not the judge of the scope of the wording of said claim; and further objected to as immaterial.)

Ans. I do, so far as the stitching is concerned.

Cross-int. 32. Do you believe that the cover of a pack saddle, having its seams united by the double herring-bone knotted lock-stitch, is a base-ball cover?

(Same objection.)

Ans. I do not.

Cross-int. 33. Do you believe that the covers of Exhibits New England Ball 1, 2, 3, and 4, Double Ball 1, Cutler 2, and Double Cover 1, would either of them, and if so, which, contain the invention described in the Mahn reissue, so far as it is referred to in the second claim, were the stitch used in the double herring-bone knotted lock-stitch instead of the stitch now seen in the covers of those exhibits?

(Same objection.)

Ans. So far as the stitching is concerned, they would, all of them. To the same extent as would the cover of a pack saddle.

Cross-int. 34. Don't you now believe that the following statement and claim, viz, "The nature of my invention consists, first, in the cover of a base-ball or other similar article formed of two hemispherical pieces of leather, suitably secured to each other; the claim being a base-ball cover formed of two hemispherical pieces of leather secured to each other by a single seam, substantially as and for the purpose specified,"

would be in exact accordance with the truth; and that the invention described in the Mahn reissue, so far as it is referred to in the first claim, consists in a ball having a cover formed of two hemispherical pieces of leather; and that this invention is not found in Exhibits New England Ball 1, 2, 3, and 4, Cutler 1, Double Ball 1, and Double Cover 1?

(Same objection.)

Ans. Certainly not; to both questions.

103 Cross-int. 35. Do you believe that the invention described in the Mahn reissue, so far as it is referred to in the first claim, is embodied in the two balls now shown you? (Exhibits 61 and 64.)

(Same objection.)

Ans. I can't tell anything about what those exhibits are. I don't know whether those are base-balls or not.

Cross-int. 36. Is that the best answer you think you can give to that question?

(Same objection.)

Ans. It is, with my present knowledge of the exhibits.

Cross-int. 37. Assume that the interior of those exhibits is not composed of rubber or cork core, with yarn wound tightly thereon to the required size, and answer the cross-int. No. 35.

(Same objection.)

Ans. Supposing the two balls not to be composed of a cork or rubber core and yarn tightly wound thereon, but to be composed of a cork or rubber core, with a substance substantially the same as yarn, for the purpose indicated, and as described in the Mahn reissue, it would constitute a base-ball, and the invention described in the Mahn reissue, so far as it is referred to in the first claim, would be embodied in the two balls now shown me.

Cross-int. 38. Do you believe that you are the inventor of a ball consisting of a core of cork or rubber and yarn wound tightly thereon to the required size, and a cover formed of two pieces of leather secured to each other by a single seam?

Ans. Before answering that question I want to correct my last one by adding after the words "base-ball and" "if provided with a double cover or sewed by the knotted stitch."

I do not.

Cross-int. 39. Then please answer again int. 37.

Ans. Not unless they are substantially the same in construction as a base-ball, previously defined by me.

Cross-int. 40. Balls consisting of a core of cork or rubber and yarn tightly wound thereon to the required size, with a single cover of the two-piece figure 8 pattern in all respects like the covers on Exhibits 61 and 64, were known to you before you made the invention described in your patent No. 127098, were they not?

104 Ans. They were.

Cross-int. 41. Would a ball made in all respects precisely like New England ball 1, except that the covers, both of them, were composed of two hemispherical pieces of leather treated and applied precisely as described in that patent, but with the ordinary seam instead of the double herring-bone knotted lock-stitch, embody any invention described in the Mahn reissue and referred to in either of the claims?

(Same objection.)

Ans. It would not.

Cross-int. 42. Please answer the same question as to Exhibit Double Cover 1.

(Same objection.)

Ans. It would not.

Cross-int. 43. Please answer the same question as to Exhibit Double Ball 1.

(Same objection.)

Ans. It would not.

Cross-int. 44. Do you believe that a ball consisting of a rubber or cork core, with yarn wound tightly thereon, and covered with a single cover, formed of two hemispherical pieces of leather secured together by a single seam, the ordinary stitch, and not the one described in your patent, would embody any invention described in the Mahn reissue and referred to in either of the claims?

(Same objection.)

Ans. I do; in the first claim and the fourth, both.

Cross-int. 45. Do you believe that a ball precisely like the one last described, except that its single cover was of the two-piece figure 8 pattern, would embody any invention described in the Mahn reissue and referred to in either of the claims?

(Same objection.)

Ans. I do not.

Cross-int. 46. Please explain more fully what you mean by "a substance substantially the same as yarn, for the purpose indicated and as described in the Mahn reissue." I quote from your 37th answer.

105 Ans. I refer to any substance the method of application of which is analogous to that employed in building up a ball with yarn.

Cross-int. 47. Such as thread, cord, twine, flexible wire, rubber thread, and the like?

Ans. Yes; and further, tape, ribbon, listing, or any other substance that can be so applied.

Cross-int. 48. I will now put to you the first cross-question in your deposition in the suit of Mahn vs. Reach, changing the phraseology as it seems to me it should be changed.

"Do you claim to be the inventor of base-balls; or of leather covers to base-balls; or of yarn wrappings in the interior of base-balls? Is not your invention spoken of in the specification of your original letters patent, and the reissue thereof as a new and useful method of covering rounded articles with leather, suitable for the manufacture of base-balls and other similar articles, and as a new and useful improvement in covering base-balls and other similar articles"? Please refer to the printed copy of your deposition in that case, and, if you can, make the same answer. Of course, make any change if you desire to do so.

Ans. I do not claim to be the inventor of base-balls; I do claim to be the inventor of an improvement in covering base-balls; I do claim to be the inventor of yarn wrappings between the covers, in the interior of base-balls. My invention is spoken of in the specifications referred to, as stated.

Cross-int. 49. Did you ever apply for or obtain a patent for "yarn wrappings between the covers in the interior of base-balls"?

(Objected to as the construction of the reissue No. 7046, in that particular, is a matter for the court, and not for the witness.)

Ans. I did.

Cross-int. 50. Give its date and number, so far as you recollect it.

(Same objections.)

Ans. No. 127098, dated May 21, 1872, and reissue 7046, April 11, 1876.

106 Direct resumed:

Int. 51. I desire to call your attention to your answer to cross-int. 44. Please read again the fourth claim of the reissue, and noting that the question is expressly restricted to a single-cover ball, see whether you do not desire to correct your answer.

Ans. I don't see any occasion to correct it: the first claim relating to the seam, and the fourth describing the hemispherical form of a cover, first applied by me to a base-ball, according to my best knowledge and belief.

JAMES H. OSGOOD.

Attest:
CHAS. F. SLEEPER,
Special Examiner.

107 United States circuit court, district of Massachusetts. In equity.

LOUIS H. MAHN
vs.
HARRISON HARWOOD ET AL.

EVIDENCE FOR DEFENDANTS IN REBUTTAL.

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me.

CHAS. F. SLEEPER,
Special Examiner.

Present, Joseph C. Fraley, esq., and Patrick J. Flatley, esq., of counsel for complainant; James E. Maynadier, esq., of counsel for defendants.

Second deposition of Harrison Harwood, jr.

BOSTON, *May* 9, 1878.

Direct examination by JAMES E. MAYNADIER, Esq., of counsel for defendants:

Int. 1. What is your name, and have you before testified in this case?

Ans. Harrison Harwood, jr.; I have.

Int. 2. Please describe the interior construction of the various kinds of balls in the market prior to 1871.

108 Ans. Is that regardless of the covers?

Int. 3. Yes.

Ans. We have manufactured balls with a rubber centre built up to full size with gimpings, with yarn and string on the outside, the same as Exhibit Double Cover 1. We have made balls with a rubber centre wound tightly and hard with yarn to full size. These balls with a rubber centre, and wound tightly with yarn, were made as hard between the years 1865 and 1870 as they have at any time since that date. We have made balls with the interior consisting of flocks, with and without rubber centres, with yarn on the outside, and also rubber thread, finished with yarn. We have made base-balls with a bag of shot for a centre, wound up with yarn to a small size, and then covered; then more yarn applied to this same ball until it was of the size required

for the outer cover. This last ball was the kind used by the New England Association of Base-ball Clubs, and was required to be of regulation size and weight, the same as Exhibits New England Ball 3, and Cutler 2. We have made balls with a rubber centre, wound up one strand at a time with fine listing or selvages from cloth until the ball was the full size, and then finished with yarn, both yarn and fine listing wound tight and hard. We have made balls with narrow strips of sheet-rubber, wound one strand at a time, very tight, until the ball was the size of Exhibit 64, then finished with one layer of yarn. We have made balls with gimpings, without rubber centres, with yarn and rubber thread wound tightly upon the outside, then a layer of strong paper; sometimes thin pieces of leather were applied to this ball, then more yarn was tightly drawn on to finish the ball.

We have made balls with a cork centre, of the size of Cutler 2, with rubber strips tightly stretched and wound, strand at a time, until the centre was shrunk to about half its original size by the stretching of the rubber, and the pounding with a bat or hammer; then yarn was tightly drawn until the ball was of full size.

We have made balls having rubber centres wound with listing; others filled with gimpings, having rubber centres, finished with yarn, and then covered; afterwards another layer of yarn was applied tightly, until the ball was ready for the outer covers.

(Noon recess.)

109 I think there may be other materials used, and other ways of making centres, not described, that we have manufactured. By centres I mean the whole interior of the ball.

Int. 4. What is the present "regulation" ball? Who made the "regulation," and how long has it been the "regulation"?

Ans. The present regulation requires a ball to be made with a rubber centre not to exceed one ounce in weight, or without any centre, wound with woolen yarn, so that when the ball is completed it shall not measure less than nine inches nor more than nine and one-fourth inches, and to weigh from five ounces to five and one-fourth, and to have the weight and size and maker's name stamped upon the ball, and to be covered with leather. The associated clubs, in convention, made the regulation. I think this size described has been the regulation for about three years, and with the exception of the rubber for some six or eight years. The rules are changed often.

Int. 5. What was the regulation in 1870 and '71?

Ans. That the rubber should weigh one ounce, and the ball should measure not to exceed 9¼ inches in circumference, and not to weigh more than 5¼ ounces, and be made of woolen yarn and covered with leather.

Int. 6. What was the interior construction of the balls generally used by the professional clubs in 1870, and for how long had these clubs given the preference to that particular construction?

Ans. The interior construction consisted of the rubber centre, wound tightly and hard with woolen yarn until the ball was of full regulation size, less the thickness of the covers. I should say from six to eight years previous to 1870. (In answer to the last branch of the question.)

Cross-examination, de bene esse, by JOSEPH C. FRALEY, Esq., of counsel for complainant:

Cross-int. 7. Is not the following of "regulation" a matter of careful observation with manufacturers of base-balls?

Ans. Manufacturers, as a rule, vary, and are not careful to see that every ball complies with the regulations.

110 Cross-int. 8. Is this true of your own firm?

Ans. We try to have the goods comply with the regulation. I am speaking of regulation balls.

Cross-int. 9. Does Exhibit Double Ball 1 comply with "regulation" as now existing? If not, point out wherein it does not.

Ans. It does not, as far as the size is concerned, nor the materials used in its construction.

Cross-int. 10. Don't you know that the following of "regulation" is so far a matter of importance to base-ball manufacturers that, if a ball being played with by the professional clubs were found to be constructed of improper materials, the balls made by the same manufacturer would thereafter be excluded from the base-ball fields of said clubs?

(Objected to as immaterial.)

Ans. I do not think that they would be excluded unless they were imposed upon too strongly or too much.

Cross-int. 11. Since 1872 have not the regulations been substantially the same as at present, excepting trifling variations of size, and variations of the weight of the rubber centre?

Ans. I think the materials used in construction have been the same.

Cross-int. 12. By your last answer, do you mean yes?

Ans. Having excepted all other requirements of the regulations in previous interrogatory, besides the materials used in construction, I think the answer given is complete.

Cross-int. 13. Question repeated.

Ans. I do not think of any changes at this moment.

Cross-int. 14. When was the "New England" game, of which you have spoken, changed into the present or "National" game?

Ans. I cannot tell. We have made New England balls on orders within a year.

Redirect examination:

Int. 15. How many "regulation" balls are made by your firm and by other manufacturers, so far as you know, in proportion to all the rest of the balls made, excluding rubber balls?

111 Ans. The percentage must be very small. I should say four or five per cent.; it may be more, and it may be less.

HARRISON HARWOOD, JR.

Attest:

CHAS. F. SLEEPER,
Special Examiner.

(It is agreed that the testimony in rebuttal is taken without leave of the court first obtained, simply to save time, and is subject to all objection which might have been urged on motion to obtain leave of court for that purpose; said agreement not being an agreement of parties in accordance with the sixty-seventh rule, as amended, but the motion for leave of court to be argued and the leave granted nunc pro tunc, if cause be shown.)

Attest: CHAS. F. SLEEPER,
Special Examiner.

112 *Deposition of Harrison Harwood, senior, in the case of Mahn vs. Reach.*

HARRISON HARWOOD, a witness on behalf of the defendants, being sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

Ques. 1. What is your name, age, residence, and occupation?

Ans. Harrison Harwood. I am sixty-two years of age. I reside at Natick, Massachusetts. I am engaged in the manufacture of base-balls at Natick, Massachusetts. I have no place of business at any other place. Our firm, H. Harwood & Sons, began to make a few goods in 1858. In 1859 we made it a regular and permanent business to manufacture base-balls, and have so continued from that day to this.

Ques. 2. What is the extent of your business?

Ans. I should say that we have sold two hundred thousand dollars' worth of goods per annum, for several years past. We have employed not less than three hundred (300) hands, at any time, for the last six years.

Ques. 3. State, if you know, how the extent of your business compares with other manufacturers in the United States.

Ans. For the first eight years of our business we made substantially all the goods that were thrown amongst the dealers. I do not know how many goods are manufactured outside of our house at the present time. I believe we now make more than all others combined. For the last five years I have not given my personal attention to the details of the business.

Ques. 4. Mr. Harwood, I desire to call your attention to two balls, one marked "Exhibit Bryan's", and Exhibit No. 1. After looking at the two balls, state, from your knowledge and experience as a manufacturer, whether they are manufactured on the same principle or not, and give the reasons for your opinion.

Ans. They are not on the same principle in manufacture. The ball marked "Bryan's" is a ball wound up to the limited size and covered, and then wound up again to the full size of a regulation ball, and then covered again. The design of this ball within a ball is to keep
113 the centre steady—that is to say, that it has the effect to keep the centre steady. The centre is liable to get out of balance. I mean the ball will lose its round shape. The ball marked "Bryan's" is meant to avoid that tendency.

Ques. 5. Is that the aim of the manufacturer of that ball?

Ans. I should judge so. I can see no other object.

Ques. 6. Look at Exhibit A, reissue patent, and state now the difference between Exhibit "No. 1" and Exhibit "Bryan's."

Ans. I should say that the design in the ball Exhibit No. 1 having two covers outside, the object is wholly of a different nature; the object of these two covers is for durability and to make it last longer; two covers on the outside, one right on the other, would have no influence in preserving the centre of the balls.

Ques. 7. How would it compare with the other ball (Bryan's) in regard to the preservation of its spherical shape or rotundity after hard hitting?

Ans. It would not be preserved as well after hard service. I mean it would not keep its shape as well.

Ques. 8. What kind of a ball would you, as a manufacturer, make, if you followed the directions contained in Exhibit A?

Ans. I should make a ball wound with yarn up to the proper size—

regulation size as now used—to receive the cover. "In the accompanying drawing this invention is illustrated by a game ball." I quote from Exhibit A. "This ball is made in the usual way, with a rubber or cork core, and yarn tightly wound on until the ball is of proper size." I understand the words "proper size" to mean full size.

Ques. 9. After reading the description in Exhibit A, up to putting on the first cover, proceed with your reading and state how you would complete the manufacture of such a ball, according to the description.

Ans. I would make a second cover, substantially the same as the first, put on with seams transversely or in opposite directions, one cover immediately over the other. In the ball marked "Bryan," no such pains are necessary; the seams may run in any direction.

Ques. 10. Could a mechanic in your employ, or in the employ of any other base ball manufacturer, by following the directions con-
114 tained in Exhibit A, make a ball of double covers with any yarn between said covers, in your opinion?

(Objected to.)

Ans. I think he could not.

Ques. Could you do so, as a manufacturer?

Ans. I could not.

Ques. 12. What effect has the structure of the two balls exhibited, upon the liveliness or deadness of the balls?

Ans. But very slight either way, if any; the one with two covers (Exhibit No. 1) would likely be the liveliest. It would make it deader if you were to move the inner cover in, like "Exhibit Bryan's," because the leather would occupy a space otherwise occupied by yarn; the only difference in deadness between the two exhibits is the thickness of the inner cover of leather taking the place of the same thickness of yarn; a ball made all of leather would be deader than all yarn.

Ques. 13. Is a ball of two covers, one immediately over the other, more or less lively or elastic, than a ball of two (2) covers of the same thickness of leather with yarn between?

Ans. I should think it would be more elastic with the covers close together.

Ques. 14. Is Exhibit No. 1 such a ball as a manufacturer would make by following the directions in Exhibit A (Reissue Patent)?

Ans. It appears to be as far as the outside appears.

Ques. 15. Looking at Exhibit (A) what shape should the two pieces of each cover be made?

Ans. Hemispherically, the proper shape for the two pieces to form a sphere.

Ques. 16. Looking at Exhibit "Bryan's," what is the shape of the two pieces of leather forming its outer cover?

Ans. It is an endless seam. I can say it is not hemispherical.

Ques. 17. Does or does not the specification require it to be hemispherical?

Ans. It does.

Ques. 18. Have you manufactured and sold base balls such as shown in "Exhibit Bryan's" and Exhibit No. 1? If so, state how long.
115 (Objected to if offered to prove prior knowledge or use of the patented invention as irrelevant to the issue.)

Ans. I have manufactured balls in both of those two ways: on the principle of Bryan's we have manufactured thousands and put them in the market in 1862. We have manufactured a great many balls on the principle of Exhibit No. 1, and put them in the market in 1859, the first

year of our business, and have made them ever since the same way, but not continuously. I have sold thousands of them since 1862.

Ques. 19. Are you acquainted with L. H. Mahn, of Jamaica Plain, the complainant?

Ans. I know him; I have a slight acquaintance with him.

Ques. 20. State, if you know, how long he has been in the manufacture of base balls.

Ans. He was salesman for a number of years for a house that sold our goods. He came to our place and selected the goods.

Cross-examination (reserving objections):

Cross-ques. 21. Are you at present actively engaged in the manufacture of balls yourself?

Ans. I have a general supervision of this business. I am at the factory every day.

Cross-ques. 22. Do you personally superintend the manufacture, or make experiments with your base-balls?

Ans. I do not personally superintend the manufacturing. I do sometimes make experiments.

Cross-ques. 23. Do you yourself play with the balls, or is your acquaintance with their properties derived from the statements of others?

Ans. I very seldom play; I often witness the playing. I have good, skillful players in my employ. I have opportunities to gain knowledge from dealers and players as well. I have experimented pretty generally both with the substance of the interior as well as the covers, and I have always made all the patterns that have been used by our firm. I think I know about as much of base-balls and their manufacture as anybody can tell me.

116 Cross-ques. 24. Have you ever played with, or seen played with, a ball of the construction of the ball Exhibit No. 1?

Ans. I have, with a great many.

Cross-ques. 25. In describing "Exhibit Bryan's," I understand you to term "a ball within a ball;" in your opinion, how much smaller than the outer cover must the inner cover be to justify such a description?

Ans. I mean if a ball has one cover immediately within the other it would constitute a ball with two covers, or a double cover. If any yarn were wound between the covers it would constitute a double ball.

Cross-ques. 26. Then I understand you to say that a single thickness of yarn wrapping around the inner cover would, in your opinion, make it a double ball?

Ans. Yes, sir.

Cross-ques. 27. In speaking of the properties of what you call the double ball, you have stated that the position of the inner cover has the effect of keeping the centre steady. What do you mean by the word centre?

Ans. Seven-eighths of the balls we make have a rubber centre; it is either waste rubber rolled up or a moulded lump of hard rubber, both intended to be spherical. I should understand it to be the rubber core mentioned in the patent.

Cross-ques. 28. Has this centre a tendency to change its position in the ball in use?

Ans. It has.

Cross-ques. 29. Do you believe that a single thickness of wrapping between the two covers would have any perceptible effect in preventing this shifting?

Ans. I do not.

Cross-ques. 30. In speaking of "Exhibit Bryan's," do you mean us to understand that the outer wrapping and outer cover would have any value as a ball if the inner one were not there?

Ans. It would be a ball just the same as an India rubber air-ball, but it would not be of any value for base-ball purposes. It would not preserve its shape.

Cross-ques. 31. Supposing you remove the inner ball from the
117 Exhibit No. 1, would not the outer cover alone be a ball in the sense in which you have just used the term?

Ans. If you could contrive to keep it in shape, it would be a ball. In a degree it would be. The Bryan's ball would retain its shape if not used. Whereas, the outer cover of Exhibit No. 1 would hardly sustain its own weight.

Cross-ques. 32. But for the purpose of use in playing base-ball, do you think there would be any valuable difference between them?

Ans. For the purpose of use in base-ball there would be no difference.

Cross-ques. 33. In the ball Exhibit No. 1, can you tell whether or not the seams break joints?

Ans. I should say they do not. It is evident to me that the inner cover is made on a pattern similar to the outer cover of the "Exhibit Bryan's" in the shape of a figure 8.

Cross-ques. 34. Do you not understand by the words "breaking joint," that the inner seam may run in any direction, provided that it does not coincide with, or lie directly underneath the outer seam?

Ans. They may break joints in any direction provided they were not directly one over the other throughout.

Cross-ques. 35. Look at the seam of the inner ball "Exhibit Bryan's," and state in your opinion whether it breaks joints with the outer seam.

Ans. I should say it did.

[Adjourned until 4 o'clock, p. m., Friday, 22d Sept., 1876, without concluding cross-examination of the witness.]

SEPTEMBER 22D, 4 p. m.

Present, parties and counsellors as before.

Cross-examination of Mr. HARWOOD continued:

Cross-ques. 36. In making balls like "Exhibit Bryan's" do you ever omit to put any rubber centre in the inner ball?

Ans. We have done so.

Cross-ques. 37. In such balls, in your opinion, what office is performed by the inner cover?

118 Ans. None—essentially none.

Cross-ques. 38. Why then do you go to the trouble and expense of putting the inner cover there?

Ans. In answer to that, I should say, we done so out of pure necessity; that the goods treated in that way have usually been what we call "seconds;" that is, the inner cover is of such character not to be called first-class, and we would therefore build this ball to a larger size and recover it.

Cross-ques. 39. What was the interior composition of such balls?

Ans. These are mostly "buckskin gimpings," that is to say, pieces of waste buckskin wound together into the form of a ball, and wrapped with yarn on the outside to keep them together.

Cross-ques. 40. Was there anything between this ball of gimpings and the external cover of the ball except yarn?

Ans. We put around the gimpings and the yarn a leather cover, then more yarn, then an outer cover.

Cross-ques. 41. Then you did not make these double balls from any fixed intention at the start to do so, but merely because it was a convenient way of disposing of the balls called "seconds?"

Ans. That is the case.

Cross-ques. 42. What kind of balls did these double balls, "seconds," prove to be in use?

Ans. They were sold, generally, as the lowest grade of goods.

Cross-ques. 43. Have you ever made any high-class double balls in which there was no rubber centre?

Ans. My impressions are, we never have.

Cross-ques. 44. Have not the sizes of rubber centres varied during your experience? And if yes, state the extent of such variation.

Ans. From half an ounce to an ounce and three quarters.

Cross-ques. 45. Did the variation in size of such centres give different properties to balls made in other respects alike?

Ans. They did, in two particulars. A ball with the same circumference would be increased in weight by a large centre. The one with the larger rubber would be more elastic, and if all rubber it would be most too elastic for use.

119 (Witness desires to correct his answer to cross-ques. 37, and say now that "we had no object in that case of 'seconds' in a second cover, or ball within a ball, at the start. That in all balls made one ball within another the tendency is that the inner ball steadies the centre. That the proper size for the inner ball should be about one-half the diameter of the outer ball. That the wider you depart from that rule, the more you destroy the object of the inner cover—I mean by steadying the centre—the retaining of the ball in its round shape.")

Cross-ques. 46. In your opinion, would not a ball made with two covers in contact, as shown in Exhibit No. 1, retain its round form better than if it had a cover of a single thickness of that same leather?

Ans. I should say quite as well, and perhaps, there would be a perceptible difference in favor of the two covers; any two pieces of leather, with the grain running in opposite directions, would be more likely to retain its shape than one piece.

Cross-ques. 47. Then you mean to say that this putting of that part of the ball which we call the inner cover further in toward the centre of the ball accomplishes this effect, of keeping the shape, in a greater degree, up to a certain point, and up to that point it diminishes?

Ans. I do.

Cross-ques. 48. Can you tell by looking at the ball, Exhibit No. 1, whether a ball with the covers in that position would be hard or soft?

Ans. I don't think it would be possible to tell. It might be, if the ball was properly made. I could hardly tell.

Cross-ques. 49. If the rubber centre was as large as the inside ball of Exhibit No. 1, would not Exhibit No. 1 be very hard and lively?

Ans. It would be very hard to handle.

Cross-ques. 50. Would not any person skilled in this art of base-ball making be able at once, without experiment, to make such a ball less hard and less lively; and could he not naturally do so by diminishing the size of the rubber centre and putting yarn between it and the cover?

120 Ans. by reducing the size of the rubber and putting yarn between it and the cover you deaden the ball. It would also be less hard.

Cross-ques. 51. Do you think if, as early as the year 1872, the art of making base balls had advanced so far, this fact would have been known to such an experienced manufacturer as yourself?

Ans. I should think it would have been so a much longer time than that.

Cross-ques. 52. Please look at complainant's Exhibit B, and state whether said exhibit, before being cut in half, was not really, upon your definition, a treble ball.

Ans. I should say, strictly speaking, that was the definition, a treble ball, because it is made up of three balls; the inner one seems to be a half-ounce moulded rubber, used as a centre to build upon, and might be called a ball.

Cross-ques. 53. Do you not find in the "Exhibit Bryans," and Exhibit B, two independent coverings of leather?

Ans. I do.

Cross-ques. 54. Is not each of these independent coverings comprised of two pieces of leather?

Ans. I think so; and their shape appears to be that of a figure 8, and they are not hemispherical.

Cross-ques. 55. Do you consider the double balls such as "Exhibit Bryans" first-class goods, and do you know whether they are in large demand?

Ans. I consider them first-class goods, and have no doubt they are in large demand.

Cross-ques. 56. Supposing the patent had contained a direction to take a rubber core or cork of the proper size, what size core would you take?

Ans. That would depend upon what the regulations required.

Cross-ques. 57. Then you mean that you construe that part of the patent according to the "League rules?"

Ans. Yes, sir.

Cross-ques. 58. What is the proportion, in your manufacture, of "regulation balls" to other balls?

Ans. I think we make, in dollars' worth, more goods of the
121 regulation balls, but not one-fifth in dozens. I sell more goods of about the regulation size, but we make them of all sizes, from about the size of the small ball in "Exhibit Bryan's" up to the full size.

Cross-ques. 59. Have not the regulation sizes varied?

Ans. They have varied, and the rules have been changed several times.

Redirect examination.

Ques. 60. In looking at "Exhibit Bryan's," do you find a base ball covering consisting of an outer and inner covering applied to a ball independent of each other?

Ans. I do not. Take that small ball out of the other, it is not a base ball, consequently the covering is not a base ball cover.

Recross examination.

Cross-ques. 61. Do you consider that your undershirt and your great coat would not be a double covering for your body, supposing that there were other clothing between them?

(Objected to.)

Ans. I should so consider it.

Cross-ques. 62. Has not then the small ball in "Exhibit Bryan's" two

coverings of leather, with something else between them, in this same sense?

Ans. We do not call small balls base-balls, we call them toy balls.

H. HARWOOD.

Sworn and subscribed before me, this 22d day of September, 1876.

SAMUEL BELL,
Special Examiner.

122 *Deposition of Louis H. Mahn in the case of Mahn vs. Reach et al.*

LOUIS H. MAHN recalled.

Ques. 1. Do you know Harrison Harwood?

Ans. I do.

Ques. 2. State for how long you have known him and whether you have ever dealt in balls of his manufacture.

Ans. I have known him sixteen years. I have dealt in balls of his manufacture from the year of 1865 to 1869, when I commenced manufacturing for myself.

Ques. 3. State to what extent was your acquaintance with his balls during that period?

Ans. I sold each year between from five to eight thousand dollars' worth of the different kinds of base balls in use. It was from his whole list.

Ques. 4. During that period did you ever see or know of any double-covered balls or double balls made by said Harrison Harwood?

Ans. No, sir.

Ques. 5. As far back as the year 1870 were such balls in use by players, or in the market, to your knowledge?

Ans. No, sir; except my own make.

Ques. 6. State whether any balls having the covers close together have been played with to your knowledge; and, if yea, when and where.

Ans. In a great many games they were played with; on the Boston grounds; also Lynn, Massachusetts, and Lowell and Harvard College; and every game in the tournament at Lynn last summer—the summer of 1875. At the Boston grounds by the Bostons and Harvards, two or three games; Boston and Beacon, two or three games; at the tournament at Lynn, the Live Oaks, Lowells, Bridgeports, and Beacons, each club with the other one game, and one tie game, making seven in all. I know that there were several professional games played with that ball,
but I cannot give their names; the names of the clubs, I don't
123 recall them. Four of these games were at Philadelphia, where I took the balls out to the grounds myself. These balls were regulation balls.

Ques. 7. Please state whether any of these balls, after they had been played with came, into your possession; and, if yea, what was their condition as regards shape?

Ans. They were perfect balls; I took one and used it in three games, taking off the outer cover each night and recovering the ball each time. I can't specify the games, but they were at the tournament at Lynn.

Ques. 8. Please state whether you had any object in making the inner ball smaller than the outer one, other than those you have stated in your previous examination.

Ans. We tried to figure on reducing the size of the inner cover to save expense; I can cut two hundred full-size covers out of a hide, then

by reducing the inner cover to the size of the inner cover of the ball, Exhibit "Bryan's," we can cut fifty more out of the remainder of the hide; all spoiled covers can be recut by the use of the smaller die, whereas if I made the ball with the covers close together the inner cover would require the full-sized die.

Ques. 9. Please state whether in a ball like Exhibit "Bryan's" there is leather to resist the strain in every direction.

Ans. Yes, sir.

Ques. 10. Please state whether in your opinion this result can be produced in a yarn ball without putting at least two covers on it.

Ans. No.

No cross-examination.

L. H. MAHN.

124 *Deposition of James H. Osgood in the case of Mahn vs. Reach et al.*

JAMES H. OSGOOD being first duly cautioned and sworn, deposes and says, as follows:

Ques. 1. What is your name, age, residence, and occupation?

Ans. My name is James H. Osgood; my age, forty-three; my residence, Boston, Massachusetts; and my occupation, physician.

Ques. 2. Are you the patentee of letters patent No. 127098, dated May 21st, 1872, and reissue to Louis H. Mahn, assignee, April 11th, 1876?

Ans. I am.

Ques. 3. Do you know said Louis H. Mahn, and were you engaged in business with him? If yea, state during what period and what was such business.

Ans. I do know Louis H. Mahn; I was engaged with him in the manufacture of base-balls, from early in June, 1871, to January 8th, 1875.

Ques. 4. State the circumstances under which you began the manufacture of base-balls such as are described in reissued letters patent No. 7046, dated April 11th, 1876.

Ans. Being engaged with him in the manufacture of base-balls, I was led, by the manifest demand for balls of a more uniform and durable character than could at that time be had, to undertake the construction of a more perfect article; various devices were tried by me to effect said purpose, which was finally accomplished by adoption of the double cover and knotted stitch. My first idea was that the cover should be so placed as to break joints, but I afterwards knew that this detail might safely be disregarded. The first balls were made with the covers in immediate contact, yarn beneath the inner cover, and one ounce of rubber in the centre; afterwards they were variously modified. We found that breaking of joints in adjusting the covers was not necessary, as the seams were not liable to rip unless the stitches were cut by friction on the ground, and support was obtained for preservation of sphericity by the aid of the inner cover without regard to relativity of seams. Again, the deadness of the ball, or the lack of elasticity,
125 whereby prevention of rebound was sought, grew more and more necessary in balls for championship games, while "regulation" still required that each ball should contain one ounce of rubber in the centre, and a layer of yarn was placed intermediate between the covers to conduce to this end. Many balls were so constructed by us and given to players for trial. The "regulation" neither requiring nor forbidding

the second cover, we were at liberty to place the second or inner cover at any depth we choose, and did place them variously.

Ques. 5. Please produce and mark as an exhibit in this cause, a ball of leather scraps or "gimpings," such as was in common use before 1870, said ball being cut open so as to show the interior, and indicate what portion of said ball would be termed the "binder," and state the object of such binder, and the material which was then used to bind the scraps or gimpings.

Ans. I produce a ball of leather scraps or "gimpings" such as was in common use before 1870, and the same is marked by the commissioner "Complainant's Exhibit" C, J. G. S., Commissioner. This ball is cut open so as to show the interior. The paper and the thread above it in this case would be termed the binder. A layer of yarn without the paper would answer the purpose equally well. The object of the binder is to preserve the shape. Yarn or rubber thread or strips with or without pieces of leather, paper, or cloth, or other suitable material beneath the yarn or rubber thread, was used to bind the scraps or gimpings for the purpose of keeping the mass of scraps or gimpings in a firm, smooth, round shape. Then the cover, being put on, resists the wear and tear of the bat.

Previous to my invention when a ball was made of all yarn, or of yarn with a rubber centre, there was no binder other than the wrapping of the yarn upon itself. I devised the idea of putting a binder of leather upon the yarn, which keeps the ball in its smooth, round shape, while the outer cover resists the wear and tear of the bat. The "binder" of leather does for the all-yarn ball what the binder of wrapt yarn did for the scrap ball, and the outer cover acts the same in both cases as a mere protection against wear and tear; the effect of the binder in preserving the shape is not altered by dropping it some distance towards the centre. It merely makes the ball softer on the hands and somewhat deader.

126 Ques. 6. Please produce and mark as an exhibit in this cause a ball of yarn with a single cover, such as was in common use before 1870, cut open so as to show the interior, and state what "binder" or "binding," if any, was used in such balls before your invention.

Ans. I produce a ball of yarn with a single cover, such as was in common use before 1870, having an ounce of rubber in the centre, marked "Complainant's Exhibit D, J. G. S., Commissioner." This ball is cut open so as to show the interior. In the all-yarn ball, before my invention, there was no "binder," except the yarn wound upon itself.

Ques. 7. Please produce and mark as an exhibit in this cause a double-cover yarn ball such as first made by you, cut open so as to show the interior, and indicate the "binder" thereof, and state the object of such binder and its effect.

Ans. I produce a double-cover yarn ball, such as was first made by me, cut open so as to show interior. The binder is the inner cover of leather. The ball is marked Complainant's Exhibit E, J. G. S., Commissioner, and the inner cover of leather which serves as a "binder" is marked "Binder." The object of the binder is to keep the ball in its smooth, round shape, and the effect is the attainment of this object.

Ques. 8. State how far this effect would be obtained by covering the yarn of said ball with a single cover, made of two thicknesses of that same leather, fastened together, instead of with two covers independent of each other, and give the experience upon which you base such answer as you may give.

Ans. The ball whose cover is made simply of double thickness of leather fastened together is no more durable regarding shape than one with a single cover, while it is vastly more uncomfortable to catch than one with a cover of a single thickness. Where two covers are used they should in no case be united, but always entirely separate. No other arrangement constitutes a double cover under my specification. In cases where our best double-covered balls have been returned for not retaining shape, I do not remember an instance where the covers had not been more or less connected or sewed together by careless
127 stitching, nor do I think any ball made with yarn between the covers was ever returned to us out of shape through reasonable usage.

Ques. 9. State what led you in your manufacture of the double-cover balls to put yarn between the "binder" and the outer cover?

Ans. Yarn was put between the covers to make the ball softer, deader, and to save leather.

Ques. 10. State what changes, if any, are made in the characteristics of the double-cover ball by putting yarn between the "binder" and the outer cover.

Ans. The changes are, the ball is rendered softer, easier to hold on a catch, and deader, and a smaller size of the binder economizes leather while it still preserves the shape of the ball.

Cross-examined:

Cross-ques. 1. Do you claim to be the inventor of base-balls, or of leather covers to base-balls, or of yarn wrappings in the interior of base-balls. Is not your invention limited by the specifications of your original letters patent and the reissue thereof to an "improvement in modes of covering rounded articles with leather?"

(Objected to.)

Ans. I do not claim to be the inventor of base-balls, or of leather covers to base-balls, or of yarn wrappings in the interior of base-balls. My invention covers the use of a cover or binder of leather on base-balls and other rounded articles placed within an outer cover in immediate contact with the outer cover, or at any point between the outer cover and the centre of the article so covered.

Cross-ques. 2. If in answer to the fifth interrogatory in chief, you have produced a double ball of "leather scraps" or "gimpings," do you say on oath that those were the only kind of "double balls" in use prior to 1870. Do you not know that Harry Ross and other manufacturers made and sold "double balls," the centre portions of which were of first-class quality, and not "gimpings," prior to 1870?

(Objected to.)

128 Ans. In my answer to the fifth interrogatory-in-chief I did not produce a double ball of "leather scraps," or "gimpings," but did produce as required a single ball of leather scraps such as was alone made prior to 1870, with a simple binder of wrapt yarn. According to my best knowledge and belief no double-covered ball was ever sold or made by Harry Ross or any other manufacturer until letters patent on my invention were issued.

Cross-ques. 3. Produce and mark as an exhibit, if you have not already done so, in answer to interrogatory-in-chief 7, a ball of two covers in contact with, but not fastened to each other, each of which covers is formed of two hemispherical pieces sewed together, the outer cover being of the same quality of leather as the inner cover; each cover breaking joints with each other?

Ans. I have produced such a ball. It is Complainant's Exhibit E.

Cross-ques. 4. Is not such a ball, as far as the covers are concerned, precisely as described in the specifications and drawings annexed to your letters patent, and Mr. Mahn's reissue thereof?

Could you, or could a skilled mechanic, make a differently covered ball of two covers with yarn between, if you or he followed the directions in the said specifications and drawings? If you answer yea, then describe the sort of ball you could make, and quote from that part of the said specifications and drawings authorizing you in such manufacture?

Ans. Such a ball is, as far as the cover is concerned, precisely as described in the specifications and drawings annexed to my letters patent. Mr. Mahn's reissue I have never seen.

To the second branch of the question I reply, A skilful mechanic could make a differently covered ball of two covers with yarn between, if he followed the directions in said specifications and drawing.

The ball so made would vary from the one produced, marked Complainant's Exhibit E, from the fact that, after the inner cover had been sewed on, a layer of yarn should have been wound upon it before the outer cover was attached. I quote from the patent: "The nature of the invention consists, second, in the employment of a binder of leather next the yarn of a base-ball, or as a first cover to other round articles
129 so stitched and put on that the outer covering when applied shall have its seams at right angles, or breaking joints with the seams of said first cover." There is no expression in the specification requiring these two covers to be placed in immediate contact.

The full effect sought through use of the inner cover is obtained by placing it beneath a layer of yarn.

Cross-ques. 5. In the ball indicated, to wit, a ball of two covers in contact with, though not fastened to, each other, would it not, if it lost the outer cover, in the words of the specification, be "fit to be used," though unfit "for the very hardest usage"?

Ans. It would.

Cross-ques. 6. When did you first begin the manufacture of double-covered balls with yarn between the covers? About how many did you make the first year? How many the second and third years? How did the demand for them compare with the demand for the balls with two covers in contact with each other? And give the reasons therefore.

(Objected to.)

Ans. According to my best recollection, I first began the manufacture of double-covered balls with yarn between the covers in the summer or fall of 1871. I have no means of replying to the question as to the number of such balls made each year. I had no hand in the accounts in the business. I don't know what the comparative sales were.

Cross-ques. 7. In answer to the 10th interrogatory-in-chief, you have doubtless given the different characteristics of a ball of double covers in contact with each other, and of a ball with yarn between the two covers. Please state how these characteristics vary as the inner cover recedes towards the centre of the ball. State also the differences between the two balls as regards—1st, capacity to stand hard hitting without ripping or losing their spherical shape; 2d, injury to the hands of the players; 3d, elasticity; 4th, deadness; 5th, use after the loss of the outer cover.

Ans. The hardness of the ball decreases directly as the inner cover recedes towards the centre; its deadness follows the same rule.

I don't know that there is any difference in the capacity of the
130 ball to stand hard hitting, ripping, or losing spherical shape between one in which the covers are placed in immediate contact and one where there is a layer of yarn between the covers. The injury to the hands of the players is much less when yarn is used between the covers; the elasticity is also less and the ball is more dead. The use of the ball after the loss of the outer cover was never a consideration in first-class goods.

Cross-ques. 8. State your occupation since the assignment of your patent to Mr. Mahn, and whether you deem yourself at present an expert in regard to the different qualities of different makes of ball?

Ans. Physician. I do consider myself an expert in the matter inquired about.

JAMES H. OSGOOD.

Attest: JOHN G. STETSON,
U. S. Commissioner.

(Here follows diagram, marked page 131.)

132 127098.

UNITED STATES PATENT OFFICE.

James H. Osgood, of Boston, Massachusetts. Improvement in modes of covering rounded articles with leather. Specification forming part of letters patent No. 127098, dated May 21, 1872.

Know all men by these presents that I, James H. Osgood, of Boston, in the State of Massachusetts, have invented a new and useful method of covering rounded articles with leather, suitable for the manufacture of base-balls and other similar articles, of which the following is an accurate specification:

The nature of the invention consists, first, in the employment of a new stitch which I call the "double herring-bone secured stitch," whereby only one stitch of the covering can be broken at a time; second, in the employment of a binder of leather next the yarn of a base-ball, or as a first cover to other round articles, so stitched and put on that the outer covering when applied shall have its seams at right angles or breaking joints with the seams of the said first cover; third, in making the leather covers of a hemispherical shape by compression and crimping in properly-shaped molds with plungers, while wet, after which they are dried in shape and then softened by moisture, stretched on, and sewed.

In the accompanying drawing the invention is illustrated by a game ball. This ball is made in the usual way with a rubber or cork core, and yarn tightly wound on till the ball is of proper size. Stout leather is then cut to proper shape to form one hemisphere of the cover, and is thoroughly wet, and, while wet, put into a hemispherical mold, preferably of wood, and strongly compressed therein by a hemispherical plunger closely fitting the mold. It is then allowed to remain in the mold till somewhat dry, the compression itself removing considerable water by pressure. The edges of the hemisphere are then trimmed, and the leather laid by so as to become thoroughly hard and dry. When it is dry and it is desirable to cover a ball, two of these hemispheres of leather are taken, moistened enough to make them flexible, while still retaining their shape, and being softened at the edges suffi-

cient to admit of working a needle through them. This drying to shape and subsequent softening is requisite, because when first molded, the leather dries unevenly; and in fitting on the covers it is requisite to have only the edges soft for sewing, while the dishing part should be only flexible. Two of these hemispheres are then placed upon the yarn ball and are drawn into place by sewing them as follows: A thread of suitable length is taken, having a needle at each end. The needles are passed from below up through the leather, the thread drawn tight on both sides, crossed, and tied in a "square or reefing knot," by which means the two threads are looped around each other. The needles are then passed under the leather, up through it, the threads again drawn up, again knotted, and this repeated until the leather is all sewed on. The usual stitch for these purposes is made with a single thread carried up through the leather, across the seam, and under the leather on the other side, up through it, across under, up through, across, and so on, making the "herring-bone" stitch. This, it will be seen, is a sort of "double herring-bone" knotted, only the thread which starts on a given side, by the knotting, never crosses to the other side. Almost any knot used for fastening the ends of rope together will serve for the knot in this case, but the "square knot" or the "Carrick bend or weaver's knot" would be the one most generally adopted, and probably the best.

This form of stitch is illustrated at Fig. 2, where *a* and *b* are the two threads, *c* and *d* the two leather sides, and *k* the knots.

This stitch will not rip, for each stitch is independently fastened.

The ball is now fit to be used, but is not suitable for the very hardest usage. I call this cover so put on the first cover or "binder." I now take two other hemispheres of leather, place them upon the ball so covered with the first cover, after that has dried, in such a way as to have their seam break joints with the seam of the covers already on, and sew them, as before, with the "double herring-bone stitch knotted."

This construction is shown at Fig. 1, where A is the binder, *x* its seam, and B is the outer cover, and *y* its seam.

By this construction I save sewing, because the seam is the line of a great circle, and not, as is usual, a meandering line sufficiently long to make two great circles. I thus put my two envelopes on the ball with only the amount of sewing now used for one. I also secure a
133 perfectly spherical form by molding the leather first. I also have leather to resist the strain in every direction. The seams cannot rip.

The illustration given is that of a base-ball, but the stitch is equally applicable to the sewing of raw-hide covers, to pack or military saddles, or to any strained covering of leather. The method of molding or shaping the leather and then drying it before attempting to fit it, moistening it while fitting only slightly is also applicable to all leather coverings, as of harness, buckles, and trimmings, panniers, axe, and shovel slings, and the like.

I claim, and desire to secure by letters patent—

1. A ball exterior, composed of two crimped hemispherical covers, A and B, having their respective seams *x* and *y* break joints, substantially as set forth.

2. In combination with a ball whose exterior is composed of two hemispherical covers A and B, with their respective seams *x* and *y* break-

ing joints, I claim the double herring-bone stitch formed of two threads, in the manner herein set forth.

JAMES H. OSGOOD.

Witnesses:
L. H. MAHN,
THOS. WM. CLARKE.

(Here follows diagram, marked page 134.)

135 UNITED STATES PATENT OFFICE.

James H. Osgood, of Boston, Mass., assignor to Louis H. Mahn. Improvement in covering rounded articles with leather. Specification forming part of letters patent No. 127098, dated May 21, 1872; reissue No. 7046, dated April 11, 1876; application filed March 17, 1876.

To all whom it may concern:

Be it known that I, James H. Osgood, of Boston, in the county of Suffolk and State of Massachusetts, have invented a new and useful improvement in covering base-balls and other similar articles; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings which form a part of this specification:

The nature of my invention consists, first, in the cover of a base-ball formed of two pieces of leather suitably secured to each other; second, the seams of a base-ball united by the double herring-bone knotted lock-stitch; third, a base-ball covering consisting of an outer and an inner covering applied to the ball independently of each other; fourth, a base-ball covering consisting of independent outer and inner coverings made of hemispherical sections, the seams of the inner and outer covers arranged relatively to each other to break joints.

In the accompanying drawing, the invention is illustrated by a game-ball. This ball is made in the usual way, with a rubber or cork core, and yarn tightly wound on till the ball is of proper size. Stout leather is then cut to proper shape to form one hemisphere of the cover, and is thoroughly wet, and, while wet, put into a hemispherical mold, preferably of wood, and strongly compressed therein by a hemispherical plunger, closly fitting the mold. It is then allowed to remain in the mold till somewhat dry, the compression itself removing considerable water by pressure. The edges of the hemisphere are then trimmed, and the leather laid by so as to become thoroughly hard and dry. When it is dry and it is desirable to cover a ball, two of these hemispheres of leather are taken, moistened enough to make them flexible, while still retaining their shape, and being softened at the edges sufficient to admit of working a needle through them. This drying to shape and subsequent softening is requisite because, when first molded, the leather dries unevenly; and in fitting on the covers it is requisite to have only the edges soft for sewing, while the dishing-part should be only flexible. Two of these hemispheres are then placed upon the yarn-ball, and are drawn into place by sewing them as follows: A thread of suitable length is taken, having a needle at each end. The needles are passed from below up through the leather, the thread drawn tight on both sides, crossed, and tied in a "square or reefing

knot," by which means the two threads are looped around each other. The needles are then passed under the leather, up through it, the threads again drawn up, again knotted, and this repeated until the leather is all sewed on. The usual stitch for these purposes is made with a single thread carried up through the leather, across the seam and under the leather on the other side, up through it, across under, up through, across, and so on, making the "herring-bone" stitch. This, it will be seen, is a sort of "double herring-bone" knotted, only the thread, which starts on a given side by the knotting, never crosses to the other side. Almost any knot used for fastening the ends of rope together will serve for the knot in this case, but the "square knot" or the "Carrick bend or weaver's knot" would be the one most generally adopted, and probably the best. This form of stitch is illustrated at Fig. 2, where *a* and *b* are the two threads, *c* and *d* the two leather sides, and *k* the knots. This stitch will not rip, for each stitch is independently fastened. The ball is now fit to be used, but is not suitable for the very hardest usage. I call this cover so put on the first cover, or "binder." I now take two other hemispheres of leather, place them upon the ball so covered with the first cover, after that has dried, in such a way as to have their seam break joints with the seam of the covers already on, and sew them, as before, with the "double herring-bone stitch knotted." This construction is shown at Fig. 1, where A is the binder, *x* its seam, and B is the outer cover, and *y* its seam. By this construction I save sewing, because the seam is the line of a great circle, and not, as is usual, a meandering line sufficiently long to make two great circles. I thus put my two envelopes on the ball, with only the amount of sewing now used for one. I also secure a perfectly spherical form by molding the leather first. I
136 also have leather to resist the strain in every direction. The seams cannot rip.

The illustration given is that of a base-ball, but the stitch is equally applicable to the sewing of rawhide covers, to pack or military saddles, or to any strained covering of leather. The method of molding or shaping the leather and then drying it before attempting to fit it, moistening it while fitting only slightly, is also applicable to all leather-coverings, as of harness, buckles, and trimmings, panniers, ax and shovel slings, and the like.

Having fully described my invention, what I claim, and desire to secure by letters patent, is—

1. A base-ball cover formed of two pieces of leather, secured to each other by a single seam, substantially as and for the purpose specified.

2. A base-ball cover having its seam united by the double herring-bone knotted lock-stich, substantially as and for the purpose specified.

3. The covering of a base-ball consisting of an outer and an inner covering, each of which is composed of two pieces of leather, and applied to the ball independently of each other, substantially as and for the purpose specified.

4. A base-ball covering composed of independent inner and outer coverings, made up of hemispherical sections, the seams of the inner and outer covers arranged relatively to each other, to break joints, substantially as and for the purpose specified.

JAMES H. OSGOOD.

Witnesses:
GEO. E. LOVETT,
W. N. REED.

137 The following is the opinion of the court upon which the decree dismissing the bill of complaint was entered in said cause October 9th, A. D. 1878:

Circuit court of the United States, district of Massachusetts.

LOUIS H. MAHN
v.
HARRISON HARWOOD ET AL. } No. 983.

Opinion of the court.—October 9, 1878.

LOWELL, J.

This suit is brought for the infringement of James H. Osgood's patent, issued May 21, 1872, No. 127098, as reissued April 11, 1876, reissue No. 7046. The description is substantially similar in both patents, but the general statement of the invention in the opening and the claims at the close are different. The invention relates to the coverings for base-balls and other similar articles; but the claims make no mention of other articles besides base-balls. The patentee describes coverings of leather cut in a hemispherical shape, and how they are to be fitted and sewed with a peculiar stitch which is the subject of claims not now in controversy. After one leather cover has been put on and has become dry, another similar cover is fitted and sewed in like manner above the first. The third claim, which is alleged to be infringed, is—

"The covering of a base-ball consisting of an outer and an inner covering, each of which is composed of two pieces of leather, and applied to the ball independently of each other, substantially as and for the purpose specified."

By reference to the specification, the purpose of the second cover is to enable the ball to bear severe usage better than it could with a single cover.

138 The defendant makes a ball with leather covers, each of which is composed of two pieces, and is therefore within the third claim, unless that claim shall be confined to the hemispherical form described in the patent. His ball has a certain amount of yarn wound round the inner cover or binder, before the outer cover is put on. In a suit by this complainant against another defendant in the third circuit, this form of ball was held to infringe the patent; and we see no reason to dissent from that decision.

Our information concerning the decision above mentioned is derived from certain admissions and other oral testimony contained in this record, with copies of some of the depositions used in that case, from which it would appear that the novelty of the invention was decided on a very different state of facts from that which is before us.

It is proved in this record and admitted in argument, that long before 1872, balls made of twine wound on a core, with a single cover of leather, were old and well known; and that balls made in other modes, such as by winding yarn or twine round a bunch or bundle of scraps of cloth, or other similar substance, or by winding yarn loosely round a core of lead or a small bag of shot, were covered with two covers of leather in substantially the mode of the patent. It is admitted in this case, though it was not in the case in Pennsylvania, that this double cover was used by the defendant years before the date of the patent, and that this use was known to the patentee.

In this state of facts the plaintiff cannot hold a patent for a double

covering for balls generally; and he contends that the term "base balls," in his third claim, means only the balls used by a certain association of persons who regulate the games of the clubs, which are made of yarn wound on a small core of cork or India rubber to a certain size and of a given weight. These are much harder, and will bear,
139 and are required to bear much more severe usage than the balls used some years ago. The regulations were substantially what they now are when the patent was issued. On the other hand the defendant contends that the claim cannot be thus contracted; and that if it were, it is still void for want of novelty.

It is quite within the decisions to construe a word in the patent, such as "base-ball," in a way to save the patent, if that is one of its meanings, though not the only or even the most common one; provided that by such a construction the patentee will receive exactly what he has invented, and every one else can use all that is old.

We are, therefore, disposed to say that the third claim may be limited, and that upon this record it may be held that the patentee was the first to combine the double leather cover (which was well known on balls made of "gimpings," with yarn wound round them, and on other forms with ball), to a ball of a harder kind, equally well known, but which before had been used with single leatner cover or with none.

But we are of opinion that such a combination is not patentable. It is not claimed in the patent, and does not appear to be true, that any new or different effect is sought or obtained, unless, perhaps, in degree, by the double cover as applied to the one ball rather than the other. A changed mode of playing the game required a harder ball, and one of well-known form was adopted, and to it was added the second cover, which was also well known and often used in the softer balls. This is a change of form which appears, in view of the state of the art, to be within the line of ordinary mechanical adaptation, and nothing more.

Bill dismissed.

140 UNITED STATES OF AMERICA.

Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the district of Massachusetts, within the first judicial circuit, certify that the foregoing is a true copy of the record of said circuit court in the cause of Louis H. Mahn, complainant, v. Harrison Harwood et al., defendants, lately determined in said circuit court, and of all proceedings therein, and of the opinion of the court.

In testimony whereof, I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this eleventh day of September, A. D. 1879, and of the Independence of the United States the one hundred and fourth.

[SEAL.] JOHN G. STETSON, *Clerk.*

141 *Bond to party on appeal.*

Know all men by these presents that we, Louis H. Mahn, of Jamaica Plain, in the State of Massachusetts, as principal, and Aaron B. Babcock and John J. Dyer, both of Boston, in said State of Massachusetts, as sureties, are held and firmly bound unto Harrison Harwood, Henry G. Harwood, and Harrison Harwood, jr., trading as H. Harwood & Sons, all of Natick, in said State of Massachusetts, in the full and just sum of one thousand dollars, to be paid to the said H. Harwood & Sons certain attorney, executors, administrators, or assigns; to which pay-

ment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the 20th day of November, in the year of our Lord one thousand eight hundred and seventy-eight:

Whereas lately at a circuit court of the United States held at Boston, within and for the district of Massachusetts, in a suit in equity depending in said court between said Louis H. Mahn, complainant, and said H. Harwood & Sons, defendants, decree was rendered against the said complainant; and the said complainant having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next.

Now, the condition of the above obligation is such, that if the said Louis H. Mahn shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void, otherwise to remain in full force and virtue.

LOUIS H. MAHN. [L. S.]
AARON B. BABCOCK. [L. S.]
JOHN J. DYER. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN G. STETSON.

Approved:

JOHN LOWELL,
Circuit Court.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

(Indorsement on cover:) No. 347. Louis H. Mahn, appellant, vs. Harrison Harwood, Henry G. Harwood, and Harrison Harwood, junior, trading as H. Harwood & Sons. Massachusetts C. C. U. S. Filed 15th October, 1879.

112-354

SUPREME COURT OF THE UNITED STATES.

LOUIS H. MAHN, APPELLANT,

v.

HARRISON HARWOOD ET AL.

APPEAL FROM THE CIRCUIT COURT, DISTRICT OF MASSACHUSETTS.

COMPLAINANT'S BRIEF.

THOS : WM : CLARKE,
of Counsel.

Supreme Court of the United States.

No. 347. October Term, 1883.

IN EQUITY.

Louis H. Mahn, Appellant,

v.

Harrison Harwood et al.

Appeal from the Circuit Court, District of Massachusetts.

COMPLAINANT'S BRIEF.

(*References to the evidence are from the transcript of record, and are marked T.R.*)

CASE.

Chronology.

The bill was filed March 5, 1878. The answer was filed April 23, 1878. An amendment to the bill, changing the names of the defendants from Henry to Henry G., and from Harry to Harrison, Jr., was filed April 27, 1878, in consequence of a statement in the answer contained in the second paragraph thereof, on page 4.

The replication was filed April 27, 1878.

The evidence was begun on April 23, 1878, and concluded May 9, 1878.

The cause was heard May 31, 1878, and the bill was dis-

missed, because the invention would not support a patent, October 9, 1878 (*Opinion*, *T.R.* 84).

SUBJECT MATTER.

Injunction Bill.

Letters Patent were granted to James H. Osgood, May 21, 1872, No. 127,098. Application was made for reissue March 17, 1876, and they were reissued April 1, 1876, No. 7046.

Reissue and Original for same Invention.

The Title of the original patent was "Improvement in mode of covering rounded articles with leather" (*T.R.* 80). The title of the reissued patent was "Improvement in covering rounded articles with leather" (*T.R.* 82).

The Drawings of the original patent and of the reissue (*T.R.* 80; *T.R.* 82) are alike; and the description in the specification, beginning in each case with the words "In the accompanying drawing," and ending with the words "shovel slings, and the like," is *verbatim* the same (*T.R.* 80–83).

The nature of the invention is set forth in the original patent as in the following left-hand column, and in the reissue as in the following right-hand column: —

Original.	Reissue.
The nature of the invention consists —	The nature of my invention consists —
First. In the employment of a new stitch which I call the double herring-bone secured stitch, whereby only one stitch of the covering can be broken at a time. [*See next column, Second.*]	*First.* In the cover of a base-ball formed of two pieces of leather suitably secured to each other (T. R. 82).
Second. In the employment of a binder of leather next the yarn of a base-ball, or as a first cover to other round articles so stitched and put on that the outer covering when applied shall have its seams at right angles or breaking joints	*Second.* The seams of a base-ball united by the double herring-bone knotted lock-stitch. [*See last column, First.*]

with the seams of the said first cover. [*See Third, next column.*]

Third. In making the leather covers of a hemispherical shape by compression, and crimping in properly shaped moulds with plungers when wet, after which they are dried in shape, and then softened by moisture, *stretched* and sewed. [*See Fourth, next column.*]

Third. A base-ball covering consisting of an outer and an inner covering applied to the ball, independently of each other. [*See Second, last column.*]

Fourth. A base-ball covering consisting of independent outer and inner coverings made of hemispherical sections, the seams of the inner and outer covers arranged relatively to break joints. [*See Second and Third, last column.*]

The restatement of the supposed nature of the invention, or of the novelty at the date of the patent, contains but one allegation which is not substantially in the original statement, and this is the *first clause*, which, if properly confined to the two pieces joined by the *equatorial* seam as subsequently described, is, for all that appears in this case, *new*.

The stitch was originally alleged to be new. The combination with the yarn wrapping of a base-ball of a leather binder and an independently applied outer leather cover was originally alleged to be new, the crimped hemispherical covers were alleged to be new, put on by the manipulations of moistening, stretching and sewing.

The DESCRIPTION addressed to the artisan is identical in the original and the reissue.

The object of the equatorial seam is set forth in identical language — to save sewing over the seam generally in use, "a meandering line sufficiently long to form two great circles," what Cutler calls (*T.R.* 42, *Int.* 5) the "bi-ovate shape," and Harwood, the figure of 8 pattern (*T.R.* 20, *Int.* 10).

The binder was to be put on moist and sewed, and dried. Instruction was given to apply an outer cover in the same

way, *after the binder has dried*, in such a way as to have the seams *break joints*.

Worcester's Dictionary defines this (p. 169) "so to arrange the joints . . . that no two shall come together."

It is stated (*T.R.* 80) that the "ball is to be made in the usual way with a cork or rubber core, and yarn *tightly* wound on till the ball is of a proper size," and that the leather cover is "softened by moisture, *stretched* on and sewed;" and again (*T.R.* 81), "that the stitch is equally applicable . . . to any *strained* covering of leather."

What Specification means in Rev. Stats. § 4916.

Right to reissue a patent is given by § 4916 of the Revised Statutes —

"Whenever a patent is inoperative or invalid by reason of a *defective or insufficient specification*, . . . if the error has arisen by inadvertence, accident or mistake, and without any fraudulent or deceptive intention."

The critical scrutiny of the Patent Office experts is anew invoked to limit, revise and confine the scope and terms of the new grant so that the claims of the inventor to monopoly of manufacture shall not exceed, in any degree, his *discovery* in the arts.

And as a penalty for his original mistake the patentee forfeits his accrued rights of recovery for previous infringements.

Referring to the act of 1836, ch. 357, 5 Stat. at Large, 117, we find that the patent must contain a short description or title of the invention or discovery, referring to the *specifications* (not specification but *specifications*) for the particulars thereof, a copy of which shall be annexed to the patent, *specifying what the patentee claims* as his invention or discovery.

In the very first Patent Act of 1790, ch. 7 (1 Stat. at Large, 109), the word specification is used, and the technical sense in which the word was then employed will aid in this consideration. Section 2, the specification was to be in writing and contain a description accompanied by drafts or models, and explanations and models of the thing by him or them invented or discovered, and described as aforesaid; which specification shall be so particular and said models so exact as not only [*usual sense*] to distinguish the invention or discovery from other things before known or used, but also to enable a workman or other person skilled in the art or manufacture whereof it is a branch, or wherewith it may be most nearly connected, to make, construct and use the same.

By the act of 1793, ch. 11 (1 Stat. at Large, 318), it was provided that every inventor should, before he could receive a patent, — Section 3 —

[1] Swear or affirm that he does verily believe that he is the true inventor, &c.

[2] Shall deliver a written description, signed by himself and witnessed by two witnesses, of his invention and of the manner of using and compounding the same, in such full, clear and exact terms as to distinguish the same from all other things before known, and to enable any person skilled in the art or science of which it is a branch, &c., to make, compound and use the same.

[3] In case of a machine, shall fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it is distinguished from other inventions; and —

[4] Shall accompany the whole with drawings and written references.

[5] Or with specimens of the ingredients and of the composition of matter sufficient for the purpose of experiment.

[6] Shall deliver a model of the machine if required.

Section 6 calls the thing filed by the patentee the specification.

By the act of 1832, chapter 162 provides, section 3 — That *whenever* any patent shall be invalid or inoperative by reason that any of the terms and conditions prescribed in the third section [of the act of 1793] have not by inadvertence, accident or mistake, and without any fraudulent or deceptive intention, been complied with on the part of the inventor, it shall be lawful . . . on the surrender of such patent . . . to cause a new patent to be granted for the same invention for the residue of the period then unexpired for which the original patent was granted, upon compliance with the terms and conditions prescribed in the said third section. . . . New patent to be liable to objection and to defences as original patents.

No public use or privilege of the *invention* so patented, derived from or after the grant of the original patent, either under any special license of the inventor, or without the consent of the patentee that there should be a free public use thereof, shall in any manner prejudice his right of recovery for any use or violation of his INVENTION after the grant of such new patent as aforesaid.

Up, then, to the year 1836 specification meant that written document and its accessories which identified and individualized the invention. Claims were not required. The inventor could individualize by declaring certain parts or combinations of his description, introduced for the better instruction of the artisan, to be old, or he could point out definitely what was new. But by the act of 1836, chapter 357 (5 Stat. at Large, 117), the inventor's right was restricted. Section 6, he was

to file a written description, drawings with refererences, models, &c., as before, "and shall particularly *specify* and point out the part, improvement or combination which he *claims* as his own invention or discovery."

Section 7 again distinguishes the specification from the description, as what is now known as the claim, and so does section 12 about caveats, and section 13 about reissues, and so does section 15 about defences.

The act of 1837, chapter 45 (5 Stat. at Large, 191), employs the phrase "specifications of claim" in section 1, and again in section 7 with regard to disclaimers, and again in section 8 with regard to revision of patents in case of reissue or grant of additional improvements on old patented constructions; and, with regard to patents had in part, section 9 says, that whenever, &c., any patentee "shall have in his specification claimed to be the original, first and true inventor of any material and substantial part of the thing patented of which he was not," &c.

In the act of 1861, chapter 88 (12 Stat. at Large, 246), the word "claim" is employed in its present sense, in section 14, as the part of the written document on file which is not "description" or "drawings."

By the year 1868 the natural tendency of our people to permit no synonyms in the language and to economize speech has effect, and the description and claims authorized to be printed in 1861 are spoken of as "specifications" in the printing resolution 1868, Res. 77 (15 Stat. at Large, 262).

In the revision of 1870, chapter 230 (15 Stat. at Large, 198,) section 22, as to the contents of a patent, provides that the patent shall refer to the *specifications* for the particulars of the invention, and that a copy of said *specifications* shall be annexed.

Section 53, about reissues, requires the new patent to be issued in accordance with the corrected *specifications*.

It is noticeable that in section 13, chapter 237, act of 1836, the right of surrender was given in case "of a defective or insufficient *description* or *specification*," meaning "description" or "claim," and that the new patent was to accord with the corrected "description and specification," meaning "description and claim;" that by section 8 of chapter 45, act of 1837, the "specification of claim" was to be subject to revision and restriction, while in the revision of 1870, chapter 230, section 53, into which section 13, chapter 237, act of 1836, sections 5 and 8 of chapter 45, act of 1837, of the statutes were consolidated, together with one of the expositions of *Battin* v. *Taggart*, 17 Howard, 74, the "defective or insufficient specification" confers the right of reissue, the specification and claim was to be subject to revision, — the corrected specification was to define the limits of the grant, — amendments of model were to be allowed from the drawings and drawings from the model, but no *new matter was to be introduced in the specification*.

Of course, if the drawings were amended by the model, the references and description of them could be changed, or the provision would be nugatory. New matter, therefore, means a change of the description or claiming part of a patent, unwarranted by the things on file in the Patent Office; drawings amendable by drawings, description to conform to drawings, claim to conform to description, and the whole instrument to represent in a new form of statement the result reached by the inventor at the date of his patent.

For an illustration, the Wilson patent for sewing-machine claimed originally a peculiar form of feed and a peculiar form of shuttle mechanism. It showed, however, for the first time, a combination of a horizontal table, a stitching mechan-

ism with a vertically playing needle, a simple feed which caught the cloth one way and let go of it the other, which was essential to make the sewing-machine a domestic implement, suitable for simple people to work. From Wilson's day to now every family and nine tenths of the factory machines embody this construction.

It is the *same invention* that is to be redescribed, reclaimed, the embodied advance in the art, and it is to be done by the evidence in the public archives, of model and drawing as representations, showing what was done by the inventor before he took his patent, and for which he took his patent.

This section of the act of 1870 either changed the law, or consolidated it without change.

It had been supposed that the statutory law of reissue was declaratory merely.

Grant v. *Raymond*, 6 Pet. 241, 245.
Stimpson v. *Westchester R.R.*, 4 How. 402.

That no license to use could be presumed from lapse of time occupied in correcting or applying to correct the patent.

If the invention is the same, the new specification is good. If it is not the same, it is bad.

This section of the act of 1870 is repeated in the Revised Statutes almost *verbatim*.

This review of the legislation shows that prior to 1836 the word "specification" had a statutory meaning of the description, claims and drawings filed by the patentee, which was its judicial meaning that had come to us from England; that by the act of 1836 requiring "claims," the statutory meaning of specification was claims, and claims only; that the Courts and public refused to use the word as Congress prescribed, but held to the old meaning, and that in the Revised Statutes the word specification has its old meaning restored,

to signify the entire document, description and claim; and this is the paper we are entitled to revise.

If, on revision, it appears, with or without proof, by inspection or by evidence of experts, on demurrer with *oyer* of patents, or on plea with the patents in evidence and the testimony of experts, that the patentee is seeking to restrain the public from a use of their rights, or to restrain an individual from practising an improvement which the patentee had not reached, and which does not involve the use of the patentee's actual improvement, then the reissue is void. But the *discovery* made, as shown by the machine described in model, drawings, description, and the new combinations, trains of action and parts which bring about the result, are the discovery for which Congress was authorized to legislate that we should have a temporary monopoly.

In the provision for this legislation, demanding an expert investigation, particular pointing out and distinct claim for the thing claimed by the inventor as his invention or discovery, there was the constant chance for the inventor to get less than his proper monopoly. He could not get more by the custom of particular claims, and his ignorance, or the error of the revisers of the grant, ought not to prejudice him.

Reissues would never be requisite except when claims are required or made.

Right of Reissue.

The statute is express that an honest patentee whose grant is not co-extensive with his invention, because his specification is defective or insufficient (containing too little), or because it claims too much, and hence, if too limited, inoperative to protect him in his monopoly, or if it claims too much, invalid, if the error has arisen innocently by inadvertence or involuntary lack of the attention which would have

got everything right, accident or excusable error, or mistake, ignorantly going wrong, may reissue his patent, and may do it during the life of the patent whenever it is *inoperative* and whenever it is *invalid*.

The reissue must be for the same invention.

The invention is not the thing claimed in the claims, it may not be described in the description, but the concrete thing illustrated by the drawings, model and description is the invention, and the concrete thing is its only monument. If a man conveys lands by metes and bounds, and it is fenced, the thing conveyed is what is in the fences. The fences are the boundaries. The descriptions of the fences are identifications but not boundaries. The deed isn't the land.

So here the patent is the preamble and habendum clause, the annexed specification is the descriptive part, but the grant is of a monopoly of the concrete thing.

You could not infringe a patent by copying the specification, any more than you could commit trespass on land by reading the deed.

This Reissue for the same Invention as the Original Patent.

This being the meaning of the word invention, this reissue is for the same invention.

We have seen the directions to the artisan telling him how to make the invention are alike. If then the man working by the old patent or by the reissue would get the same concrete thing, the invention would be the same. The variation of the claims would vary the protection for the invention, not the invention itself.

The following double column shows the difference in claims.

But before proceeding to that, the following state of the art and result of the improvement should be remembered: —

State of the Art.

Three sorts of balls were known in 1871 which it was customary to cover with leather.

(1) The New England ball, made with a hard core (lead or shot), a loosely wound yarn wrapping, and double leather covers. In order to keep the yarn from displacement, it was customary to quilt it, sew it to the shot-bag of the core; and the double cover served no purpose in preserving the shape of the balls.

(2) The gimpings ball, of scraps of leather, tied together with a yarn or string binder to a round form, full of cells, and covered with leather. Sometimes they had two covers, the second or outer one being applied when the first was imperfect. The gimpings interior of this ball was so lacking in solidity that the outer cover did not preserve the sphericity of the ball in use.

(3) The hard-wound single leather covered yarn ball used in the national game. This ball has no cells in its structure, but the severe batting of the game displaced the yarn and the ball lost its shape.

The leather cover of the gimpings and national game ball was strained on wet. The leather cover of the New England ball was not strained on.

Improvement.

Osgood was told then that a loosely wound yarn ball was not kept in shape by a double cover, and that a tightly wound gimpings ball was not kept in shape by a double strained cover, and that a tightly wound yarn ball was not kept in shape by a single strained leather cover.

He was not, therefore, led by analogy to try the strained double cover.

He tried it, and found that on a tightly wound yarn ball a second strained cover would keep the ball in shape, and would prevent this displacement of the yarn in the hard batting.

He invented then a new base-ball.

Let us grant for a moment that he thought at the first trial of this ball that it was because he moulded the covers, and united them by an equatorial seam, and stitched them with his peculiar stitch, and found out afterwards that he had overlooked the cause of goodness in his ball, and run after chimeras: shall it be said that if he waits long enough to study out the obscure cause of the efficiency of his ball in order to specify accurately his invention, trying it every chance he got in games, that his chance of forfeiture by public use is running; and if he takes his patent without accurately stating the cause of goodness, he is forever debarred from asserting truly the cause of goodness? Why should he suppose that duplicating the leather cover would work all this change? Other double leather-covered balls had not this property. The fact that it was yarn and not gimpings, tight wound and not loose wound, covers shrunk on, not buckskin covered, had more to do with it than he at first supposed, and he asserted his right. He first reached the result of a base-ball of tight wound yarn with leather covers that would keep its shape. The ball had double leather covers. They worked their result, whether they were seamed by the equatorial or the figure of eight seam; whether they were stitched with Osgood's stitch or not. They could be crimped on the ball as well as in moulds, if applied wet. But they must be independently applied. He described this independent ap-

plication in his first application. He ought to have had it allowed, had he then claimed it.

Instead of asking a court to make a strained construction of his first claim by invoking the doctrine of equivalents, he surrendered his back damages and made his claims specific and narrow.

Comparing them, it will be seen he has not enlarged his invention in the reissue, and has hardly enlarged the scope of his claims liberally construed.

CLAIMS.

ORIGINAL.	REISSUE.
1. A ball exterior composed of two crimped hemispherical covers, A and B, having their respective seams *x* and *y* break joints substantially as set forth.	1. A base-ball cover formed of two pieces of leather secured to each other by a single seam, substantially as and for the purpose set forth.
2. In combination with a ball whose exterior is composed of two hemispherical covers, A and B, with their respective seams *x* and *y* breaking joints, I claim the double herring-bone stitch formed of two threads in the manner herein set forth.	2. A base-ball cover having its seams united by the double herring-bone knotted back stitch, substantially as and for the purpose specified.
	3. The covering of a base-ball consisting of an outer and inner covering, each of which is composed of two pieces of leather, and applied to the ball independently of each other, substantially as and for the purpose described.
	4. A base-ball covering composed of independent outer and inner coverings and made up of hemispherical sections, the seams of the inner and outer covers arranged relatively to each other to break points, substantially as and for the purpose specified.

As the law writes into a claim the words "known equivalents," the construction of the first claim of the original patent, the third and fourth claim of the reissue, exactly represent the first claim of the original, and exactly represent also the *second* clause of the statement of invention: "the employment of a binder of leather next the yarn of a base-

ball, or as a first cover to other round articles, so stitched and put on that the outer covering when applied shall have its seams at right angles or breaking joints with the seams of the said first cover."

These goods are high cost and first quality. These defendants make more balls than all other makers in the United States together (*T.R.* 69, *Harwood*, int. 3). About a fifth in number are regulation balls, and this fifth in dollars' worth is more than all the rest (*T.R.* 74, cross-int. 58). And this whole business is $200,000 a year (*T.R.* 69, int. 2) or $100,000 worth a year of regulation base-balls by a single firm.

INFRINGEMENT.

It is the third and fourth claims of the reissue that defendants have infringed.

Defendants admit the making of the balls "Exhibits A and B."

The seams of these exhibits break joints (*T.R.* 15; *Mahn*, cross-int. 67).

It would be hard to find a ball where the covers did not break joints (ibid. cross-int. 47).

They are base-balls. They are made as described in the patent, with "a rubber centre and yarn *tightly* wound on;" the covers have been "softened by moisture, stretched on and sewed."

They have two piece covers, not hemispheres crimped in a mould, but each piece covers half of the sphere and is crimped on the ball, which is equivalent to the plunger of the mould. They are not joined by the great circle seam, but by the *meandering seam*, "sufficiently long to make two great circles," described in the patent as the usual seam.

If the patent is good, the defendants infringe, unless the hemispherical cover be all the essence of the invention.

Now it is true that the rubber-centred, tightly wound yarn ball with a single strained leather cover was the usual base-ball at the date of the patent.

Complainant's exhibits "Inner yarn" and "Outer yarn" (*T.R.* 48, *Mahn*, int. 2) show what is meant by "yarn tightly wound on."

"Exhibit Finished Ball" shows how the cover is strained to place.

Exhibits "Lynn" and "Boston" show the effect of this method of manufacture on balls that have been used. One has been used in two games, one in three games. Each game there was a new outer cover, and inspection shows that the usage was hard, at any rate in the last game (*T.R.* 49, *Mahn*, int. 6).

The object of the inner cover is to make the ball dead or lively and preserve its sphericity (*T.R.* 49, *Mahn*, int. 9; 59, *Osgood*, int. 6).

A single covered tightly wound yarn ball with rubber centre will not retain its shape through a dozen of balls [strokes with the bat against a ball thrown by the pitcher to the striker], while the double cover, whether with or without yarn between the covers, always retains its shape (*T.R.* 51, *Mahn*, int. 22). The cover, after repeated batting, gets pliable and loose, and the yarn follows the cover up, slides to one side (ibid. int. 23). But whether there is or is not yarn between the covers, the inside cover does not loosen, even if the outside does (*T.R.* 52, *Mahn*, int. 24).

This statement was corroborated by defendant Harwood, Sen., in *Mahn* v. *Roach* (*T.R.* 69, int. 4). "The centre is apt to get out of balance. I mean the ball will lose its round shape."

If the two covers are in contact, the ball is livelier. If there is yarn between, it is deader (*T.R.* 70, *Harwood*, int. 13).

And a ball with two covers in contact would retain its shape better than one with a single cover (*T.R.* 73, *Harwood*, cross-int. 46), and the same with yarn between the covers (ibid. 69, int. 4).

The thing to be improved by the patentee Osgood in 1871 or 1872, was a rubber-centred, hard-wound yarn ball, leather covered, with its leather cover strained on, and which must be a *hard* ball, and which was liable to get out of shape in a game by stretching of the cover and displacement of the yarn subsequent to the stretching of the cover.

If there was anything in the state of the art in 1871 and 1872 that indicated that this stretching of the cover and the displacement of the yarn could be prevented by placing a strained exterior cover on such a ball, then there was no patentable invention in Osgood's doing what we complain of the defendants for doing, —what we complain of as an infringement of the patent.

State of the Art.

We must find, then, a hard ball substantially wound up of yarn by the method which makes a hard ball, or some other ball which, in use with a single cover, would lose its sphericity, and which would have its sphericity retained in use if covered with a double cover.

The defendants have, since the reissue, made balls as follows (*T.R.* 19, int. 3; 29, int. 3): —

"Exhibit 60," a hard single leather covered ball.

"Exhibit 61," a hard single covered gimpings ball.

"Exhibit 62," a hard single covered gimpings ball.

"Exhibit 63," a hard single covered ball.

"Exhibit 64," a hard single covered ball.

"Exhibit 65," a small hard single covered ball.

"Exhibit 68," a small hard single covered rubber string ball.

"Exhibit 56," a hard double leather covered yarn ball, with covers in contact (*T.R.* 19, int. 4).

"Exhibit 57," a hard double leather covered yarn ball, with yarn between the covers (*T.R.* 20, int. 5).

"Exhibit 58," a hard double covered yarn ball, with yarn between the covers, the inner cover being in four pieces (*T.R.* 20, int. 5; 30, ints. 10, 11).

Previous Double Covered Balls.

Before the patentee's invention, sundry balls are said to have been made with double covers.

Double cover No. 1, a hard gimpings ball, with four-piece cover; not a base-ball (*T.R.* 20, int. 7, *Harwood*). This was made for this case (*T.R.* 24, cross-int. 36). It is an obsolete ball, a low grade ball (ibid. cross-int. 41).

Cutter No. 2, a small *soft* ball, with two buckskin covers not sewed on (*T.R.* 20, int. 7), made for the case (*T.R.* 24, cross-ints. 42, 43; see cross-int. 47); wound rubber centre and yarn outside (*T.R.* 34, *Harwood, Jr.*, int. 45); quilted through the yarn to lead centre (*T.R.* 43, *Cutter*, int. 17).

"Exhibit Double Ball No. 1," a hard gimpings ball, with two covers and a thin layer of yarn between the covers (*T.R.* 21, *Harwood*, int. 13), made for this case (*T.R.*, cross-int. 44); an inferior ball (*T.R.* 26, cross-ints. 56, 57).

New England Ball No. 1, a soft four-piece covered ball, with double covers and yarn between the covers (*T.R.* 21, *Harwood*, int. 13), made for the case.

"Exhibit New England No. 3," a small double covered soft ball with yarn between the covers (*T.R.* 31, int. 17).

"Exhibit Eliot," a small, soft, misshapen, buckskin covered four-piece cover ball, loaded with shot in a bag, yarn wound, leather covered, again yarn wound, and again leather covered (*T.R.* 35, 36, *Mahn*, ints. 5, 6).

"Exhibit Ring," a small soft ball, having a lead centre, yarn wound on a leather cover, more yarn, another cover — loaded with white lead in a bag (*T.R.* 45, int. 6).

"Exhibit Cutter 1" (like Cutter 2) (*T.R.* 42, int. 7).

"Exhibit New England Ball No. 2" (like New England ball No. 3) (*T.R.* 47, *H. G. Harwood*, int. 5).

Gimpings balls are made by taking a mass of leather scraps, and winding and pressing them down by twine till brought down to a proper diameter. Yarn balls are wound up; gimpings balls are wound down (*T.R.*, *H. G. Harwood*, cross-int. 50).

Flocks balls are made like gimpings balls (*T.R.* 34, cross-int. 42).

Balls for New England or Massachusetts game were required to be 5½ to 6½ inches round, to be made *soft* of yarn and covered with leather (*T.R.* 40, *Mahn*, int. 49).

The most satisfactory balls had to have the yarn quilted before covering with leather, to be satisfactory (*T.R.* 42, *Cutter*, int. 5).

The New England balls 1 and 4, and Cutter 2, and the like, would be useless in playing the present or national game (*T.R.* 28, *Harwood*, cross-int. 71 and int. 79).

The New England ball was not wound hard or tight, and was meant to be soft and stay soft, and thus the yarn required to be quilted or sewed together to keep its place (*T.R.*, *Cutter*, 44, cross-ints. 18–20; *ibid.* 45; *Ring*, int.

4). They were purposely made soft, and the yarn sewed to the inside cover (ibid. cross-ints. 8, 9).

Defendant H. G. Harwood asserts that all the balls "Exhibit New England Balls 1 and 3, Double Ball No. 1, Cutter 3," embody the inventions of the 1st and 3d claims of the reissue (*T.R.* 47, *H. G. Harwood*, ints. 7, 8).

The foregoing description shows that the small soft balls of the New England game, Cutter 1 and 2, New England 1, 2, 3, 4, all made for this occasion, and *Eliot and Ring*, which have come to us from the past, differ from the balls described in the patent in respects:

1. They are soft and not hard.

2. They are loosely wound with yarn, not tightly wound.

3. The yarn is differently wound on. They required to have the yarn quilted, or sewed together in bunches, or sewed to the inner cover, in order to keep their shape, and did not and could not keep their shape in use even then, as "Exhibit Eliot" shows.

4. The covers were not put on wet and strained to place, and then by drying shrunk to the yarn as described in the patent.

5. They would be useless as substitutes for the patented ball or the tightly wound hard ball of the national game.

6. The double cover, two leather envelopes in contact, had no tendency whatever to keep the ball round, while in the patented ball it does.

The balls for the New England or Massachusetts game do not exhibit the details of the patented ball in construction, nor do the details of these balls produce the result of the complainant's construction.

The other pretended anticipating balls with double covers are "Exhibits Double Cover No. 1, and Double Ball No. 1."

Double Ball No. 1 (*T.R.* 25, *Harwood*, cross-int. 56) has

a rubber core built upon with gimpings and yarn, smoothed off with paper wrapped on, covered, wound up to a larger size and covered again (cross-int. 57). It is of the class called seconds. It does not comply with the regulations in size or materials (*T.R.* 68, *Harwood, Jr.*, cross-int. 9). The double covering of this ball had no object except to utilize a defectively covered ball (*T.R.* 72, *Harwood*, cross-int. 38). Double Cover No. 1 is a low grade cheap quality, the stretch of the leather in the covers is *never* taken out before being put on the ball (*T.R.* 27, *Harwood*, cross-int. 66). They were filled with gimpings like this one and flocks (*T.R.* 31, *Harwood, Jr.*, int. 18).

One other sort is mentioned, of which there is no exhibit, "with yarn principally."

This was not known when Harwood, senior, testified in Philadelphia.

These do not embody the invention. That begins with the rubber core, which is wound with yarn hard and tight from within outward. See "Exhibits Inner Yarn and Outer Yarn," hammered to place (*T.R. Mahn*, int. 2).

Such balls, if covered with a single cover, on the ball first in use, used to get out of shape; when covered with two independent covers shrunk on, do not, for the outer cover can move on the inner one (*T.R.* 16, *Mahn*, cross-int. 82), and so takes up the injury of the bat without transmitting it to the yarn, just as a horse with a sore shoulder can be cured if an independent collar lining be put over the sore place, and the collar allowed to slip on the outer surface of the lining.

Gimpings balls are *wound down* from a handful of leather scraps. They start from the outside larger than they end when compressed by yarn or string (*T.R.* 47, *Mahn*, int. 4). "Exhibit Scrap and Scrap Ball with binder."

A double cover on a gimpings ball would have no effect in preserving its sphericity (*T.R.* 50, *Mahn*, ints. 13, 15). One innings batting would probably destroy the roundness of a scrap ball (*T.R.* 50, int. 13).

No gimpings ball has ever yet been produced which would preserve its shape through a game of base-ball (*T.R.* 59, *Osgood*, int. 7).

This evidence is absolutely uncontroverted.

On this state of evidence the gimpings ball is not the base-ball of the patent, cannot be put to the same use, and the structure of the patent would not be produced even were the covers shrunk on.

The covers of gimpings balls are never shrunk on. The stretch is never taken out of the leather.

Errors of the Court below.

There are on this state of facts but three errors in the opinion (*T.R.* 84).

One of these is in the sixth paragraph, when the gimpings balls and balls of the New England, Cutter, Ring and Eliot construction are said to have been "covered with two covers of leather in *substantially the mode* of the patent."

The error here is that the fitted and sewed covers of buckskin, calf or sheepskin which were not wet and strained on and shrunk down to the interior are said to be substantially like the covers which were strained on, although the straining on and taking the stretch out of the leather is essential to the service required of the plaintiffs' ball and of the balls complained of.

The second error is, that it is said no new effect is produced by the strained double cover of the hard yarn ball from that of the slack double cover of the New England soft balls, or of the gimpings balls. Because the strained double

cover alone keeps the yarn ball in shape; and in the soft ball the yarn must be sewed to the covers or to itself for this end, and the gimpings ball can't be kept in use any way.

Hence by a slight change, not indicated by previous knowledge of the art, the hard yarn ball which with a single cover lost its shape, and which could not be sewed as the New England soft balls were to preserve it, was enabled to retain its shape in hard use, and build up a great industry of making each year more than $100,000 worth of goods, and to employ many men.

If this be true, the improvement was not obvious; and if not obvious, it was patentable.

The third error of the Court below is the judgment that this was not a patentable subject matter.

The judgment should be reversed.



OFFICE SUPREME COURT U.S.
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Supreme Court of the United States.

No. 77.

LOUIS H. MAHN, APPELLANT,

v.

HARRISON HARWOOD ET AL., APPELLEES.

APPELLEES' POINTS.

The patent sued on is reissue No. 7046, granted to complainant April 11, 1876 (p. 82).

The original patent is No. 127,098, dated May 21, 1872 (p. 80).

The first defence is that the reissue should never have been granted, because not for the same invention as the original, and because it was obtained not to correct any defect, but to include new matter.

The invention described in the original consists of three parts: first, a peculiar stitch; second, two covers for base-balls or other round articles, the seam of one cover lying across the seam of the other cover; third, a cover formed of two pieces of leather, each moulded into the form of a hemisphere. But there are but two claims: "First, ball exterior composed of two crimped hemispherical covers, A and B, having their respective seams x and y break joints;" second, the peculiar stitch, &c.

The answer admits that these two inventions are new with the patentee Osgood (p. 4). But it turned out that neither of these inventions was of any value (21–24, p. 22), so the patent was reissued by the assignee on an application filed nearly four years after the date of the original, the purpose of the reissue being plainly to expand the patent by making it cover —

First. The cover made up of two pieces of leather.

Second. The peculiar stitch.

Third. The double cover; that is, two separate covers, each made up of two pieces of leather.

Fourth. The invention covered by the 1st claim of the original patent.

The appellees submit that the reissue is void on comparison with the original. No argument is deemed necessary on this point, in view of the prominence of like questions within a few years.

It is admitted by Mahn, the assignee who reissued the patent, that he was aware that "a base-ball cover formed of two pieces of leather secured to each other by a single seam," called the "two-piece cover" (int. 12, p. 9), was in general use long before Osgood invented the cover made up of the two hemispherical pieces of leather (cross-int. 53, p. 13; cross-ints. 56–58, p. 14).

It is not asserted that the defendants have ever made any use of either of the inventions claimed in the original patent.

As to the 1st claim of the reissue: The defendants admit that they have made very large numbers of base balls, each having a cover formed of two pieces of leather secured to each other by a single seam, figure 8 pattern, "Exhibits A and B;" but the appellant strenuously contends that these balls with the two-piece cover, figure 8 pattern, do not infringe the 1st claim of his reissue, and that that claim must be limited to a cover formed of two *hemispherical* pieces of leather, &c., for the reason that the appellees supplied the market with balls having a cover formed of two pieces of leather secured to each other by a single seam, for many years before the date of Osgood's alleged invention.

This is not disputed. (See *Mahn*, cross-ints. 93–95, p. 17; *Harwood*, ints. 8–10, p. 20.)

As to the 2d claim of the reissue: It is not asserted that the defendants have ever used the peculiar stitch referred to (see

Mahn, cross-int. 59, p. 140) ; and the same is true as to the 4th claim.

The only claim alleged to be infringed is the 3d claim of the reissue. But the proof is overwhelming that the double covers used by the defendants since the Osgood patent do not differ at all from the double covers used by the defendants many years before the date of Osgood's alleged invention ; for double-covered balls were made and sold in great variety by the defendants for many years before 1870 ; and double covers, with each cover formed of two pieces of leather, figure 8 pattern, precisely like the covers of "Exhibits A and B," were made and sold by the barrel for five years before 1870 (*Harwood*, ints. 11–16, pp. 20, 21).

Under these circumstances it seems clear that the 1st and 3d claims are void — unless the word "hemispherical" be inserted by construction before the word "pieces" — for want of novelty ; and secondly, because they are broader claims than are warranted by anything in the original patent ; and it is submitted that the word "hemispherical" was designedly omitted from these claims, and from that paragraph in the specification which relates directly to these claims, because the patentee and his assignee both intended to make a claim under which they could intimidate persons without counsel, and for the purpose of claiming what both knew was old, but which, it is charitable to suppose, they ignorantly believed they had a right to claim, because not before *patented*.

If the word "hemispherical" be so inserted, the defendants have not infringed.

The complainant and the patentee have both testified and assert that the word "hemispherical" *must* be inserted before "pieces" in the 1st claim ; but must *not* be so inserted in the 3d claim.

The complainant, Mahn, and the patentee, Osgood, assert in their testimony, in substance, that the 3d claim of the reissue is for a *base*-ball cover, and not for a ball cover ; and that "Exhibits Cutter 2, and Double Ball 1," are not *base*-balls, and their covers, consequently, not *base*-ball covers ; and that the 3d claim of the reissue

does not embrace the covering of Cutter 2 or Double Ball 1, for the reason that these balls are not *base*-balls. That this is absurd, would seem to need no argument; but it is nevertheless submitted that it is a fair statement of the position taken by them (see *Mahn*, 2–7, pp. 48, 49; 27–36, pp. 52–54; 40, p. 55; *Osgood*, 12, 13, p. 60; 26–30, pp. 62, 63). But it is only just to Dr. Osgood to say that in his 5th answer, page 59, and in his 16th answer, page 61, he shows more intelligence. He relapses, however (41–47, pp. 64, 65).

It is believed to be clear that the 1st and 3d claims of the reissue are for a "cover" or "covering" for *base*-balls, and other balls, and similar articles; and that the interior construction of the ball has nothing whatever to do with the reissue.

What a *base*-ball is, does not well appear from the testimony, unless it be what is sometimes called a regulation ball; and what a regulation ball is, depends altogether upon the judgment of those gentlemen who attend conventions of ball-clubs, and from time to time determine what kind of ball shall be used in playing match games between such professional clubs as they represent.

In this sense it is beyond all doubt that "Exhibits Cutter and New England Balls" are *base*-balls, and also regulation balls; although it is equally clear that they are not such base-balls as the regulation now in force among the professional clubs requires to be used in playing match games. But it is not seen how this species of learning can have any effect on this case.

If an attempt be made to construe the 3d clause of the reissue as for *a "ball made in the usual way*," as stated in the reissue, and having "the covering" claimed in the 3d claim, then the answer is, that the 3d claim cannot be so construed, in view of the statements of the patentee that he has "invented a new and useful improvement in covering base-balls *and other similar articles;*" that the third part of his invention is "a base-ball covering consisting of an outer and an inner covering applied to the ball independently of each other;" that "in the accompanying drawing the invention is *illustrated* by a game-ball," "made in the usual way;" that he puts

"two envelopes on the ball with only the amount of sewing now used for one;" that he secures "a perfectly spherical form by moulding the leather first;" and that he has "leather to resist the strain in every direction." It is, moreover, obvious from the specification that the main invention is a cover (for balls and other articles) formed of two hemispherical sections; and that with one cover "the ball is fit to be used, but is not suitable for the very hardest usage," and therefore a second cover is added, in order to provide "leather to resist the strain in every direction."

There is not a word in the specification of either the reissue or the original which suggests or intimates that any part of the invention is a combination of (1) a ball "with a rubber or cork core, and yarn tightly wound on till the ball is of proper size;" and (2) a double cover of the kind described in the 3d claim of the reissue; while it is clearly stated in both the original and reissue that the invention has nothing to do with the interior construction of the ball, but is applicable to balls "and other similar articles." It seems clear also that this combination is not patentable, in view of the fact that double covers were old, and balls made of a rubber or cork core and yarn tightly wound on were also old; but if patentable at all as a combination, the specification should certainly point out that the invention consists in the combination, and should not state that it consists in the cover; and should also show wherein the double cover was different when used on a rubber-and-yarn ball from what it was when used on other balls.

This construction, moreover, leads to this absurdity, viz., that a ball not having "a rubber or cork core and yarn tightly wound on," but having the precise double cover described in the specification and claimed in the 3d claim, would not infringe the 3d claim, although the cover would answer to every word of the description and to every word of the claim. Dr. Osgood boldly seized the bull by the horns (41–43, pp. 64, 65), and Mr. Mahn did the like (44–47, pp. 55–56); but these questions and answers

sufficiently show the absurdity of construing the claim for a *ball* instead of for a *covering*.

In conclusion, the defendants submit:

I. That the 1st claim of the reissue is void (*a*) for want of novelty (7, p. 47); and (*b*) because it is for an invention not described, suggested nor substantially indicated in the original patent.

II. That the 3d claim is void for the same reasons (8, p. 47).

III. That the only way to save these two claims is to insert in each of them the word "hemispherical" before the word "pieces;" that this change would relieve them from both objections, and also clear defendants from the charge of infringement; but that this change cannot be made, for the reason that it is clear from the specification that the word "hemispherical" was designedly omitted, and with intent to cover more than was the right of the patentee.

Respectfully submitted by

J. E. MAYNADIER,
for Appellees.